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Attorneys for Proposed Relator
San Jose Police Officers' Association

BEFORE THE ATTORNEY GENERAL

OF THE STATE OF CALIFORNIA

SAN JOSE POLICE OFFICERS' ASSOCIATION, Plaintiff-Relator, v. CITY OF SAN JOSE, and CITY OF SAN JOSE CITY COUNCIL, Defendants.	No. **VERIFIED STATEMENT OF FACTS IN SUPPORT OF APPLICATION FOR LEAVE TO SUE IN QUO WARRANTO** **[CAL. CODE REG TITLE 11, SECTION 2(A)]**

I, Gregg McLean Adam, declare and say:

1. I am an attorney licensed to practice before all the courts of the State of California. I am a partner with the firm of Carroll, Burdick & McDonough LLP, attorneys of record for Petitioner/Plaintiff SAN JOSE POLICE OFFICERS' ASSOCIATION ("SJPOA") in this matter, and I have been authorized to make this statement on its behalf.

2. The SJPOA is the "recognized employee organization" for all police officer classifications in Bargaining Units 11, 12, 13 and 14 (collectively "Police Officers") employed by the City of San Jose to work in the San Jose Police Department, pursuant to the Meyers-Milias-Brown Act, Government Code section 3500 *et. seq.* ("MMBA").

CBM-SF\SF553714.2

3. I submit this declaration in support of the SJPOA's *Application for Leave to Sue in Quo Warranto*. I am familiar with the facts set forth in this matter, as well as those set forth in this Verified Statement of Facts, because I represented the SJPOA in bargaining and discussions over pension reform matters detailed herein and, consequently, have first-hand knowledge of those discussions and the documents exchanged and addressed in those discussions. Therefore, if called upon as a witness, I could and would testify competently to these facts.

4. On April 13, 2011, San Jose Mayor Chuck Reed and Vice Mayor Nguyen issued a press release stating that "San José's retirement director has projected that [pension] costs could rise to $650 million per year by fiscal year 2015-2016 …." Attached to this Declaration as Exhibit 1 is a true and correct copy of that April 13, 2011, press release.

5. On May 13, 2011, the City published a "Memorandum re: Fiscal Concerns" wherein Mayor Chuck Reed asserted that the City's pension costs were projected to grow to $650 million annually by 2016. In the May 13, 2011 Memorandum re: Fiscal Reforms, the City's Mayor recommended that the City Council approve a ballot measure to amend the San Jose City Charter to dramatically decrease retirement benefits for current retirees and current/future employees. Attached to this Declaration as Exhibit 2 is a true and correct copy of that May 13, 2011 Memorandum re: Fiscal Reforms.

6. At a meeting on May 24, 2011, the City Council approved the Mayor's recommendation and directed City Council staff to draft a proposed ballot measure that, if approved by the voters of the City of San Jose, would implement the Mayor's recommendations.

7. On June 3, 2011, the Mayor issued his "June Budget Message For Fiscal Year 2011-2012." In it, the Mayor reiterated that retirement costs could "jump to $650 million per year by 2016." He also attached a chart highlighting potential pension costs of $650 million. Attached to this Declaration as Exhibit 3 is a true and correct copy of the June 3, 2011 Budget Message.

8. Also on June 3, 2011, the SJPOA reached a tentative agreement with the City for a new Memorandum of Agreement ("MOA") (a collective bargaining agreement), which was subsequently ratified by both sides. The MOA contained a Side Letter agreement, entitled "Retirement Reform," which permitted either party to continue negotiating about retirement benefits during the lifetime of the MOA (originally one year's duration, subsequently extended to two). Attached to this Declaration as Exhibit 4 is a true and correct copy of the Side Letter Agreement.

9. The Side Letter Agreement also contained the parties' agreement to create a voluntary "opt-in" program, under which police officers could voluntarily opt-in to a new retirement tier providing a lower maximum benefit. The parties discussed that the anticipated lower contribution rate for employees under the opt-in would attract officers to exercise their right to opt-in.

10. On June 20, 2011, SJPOA and the City, along with the San Jose Fire Fighters, IAFF, Local 230 ("Local 230") (collectively "the Unions"), entered into a Pledge of Cooperation and Agreement Upon a Framework for Retirement Reform and Related Ballot Measure Negotiations ("Framework"). Therein, the parties agreed to meet and confer over the Mayor's anticipated ballot measure, the Side Letter Agreement regarding retirement reform and the SJPOA's opt-in program, with the goal of reaching an agreement by October 31, 2011. However, nothing in the Framework waived the Unions' right to bargain over the City's anticipated ballot measure in the event negotiations were not completed by that date, and, as detailed below, the City changed its proposed reform measure prior to October 31, including as late as October 27. Attached to this Declaration as Exhibit 5 is a true and correct copy of the June 20, 2011 Framework.

11. At the meeting on June 20, 2011, the City's Chief Negotiator, Deputy City Manager Alex Gurza, told the Unions' negotiating teams that, at that time, the only operative retirement proposal from the City was the Mayor's "Memorandum re: Fiscal Concerns," referenced in paragraph 4 above, which referenced the purported $650 million cost projection.

12. On July 5, 2011, the Mayor issued his proposed ballot measure. Attached to this Declaration as Exhibit 6 is a true and correct copy of the City's July 5, 2011, initial Proposed Ballot Measure regarding "Public Employee Pension Plan Amendments – To Ensure Fair and Sustainable Retirement Benefits While Preserving Essential City Services."

13. In approximately mid-July, 2011, the City and the Unions began bargaining over the ballot measure and retirement issues generally. Coinciding approximately with the mid-July commencement of bargaining, Mayor Chuck Reed began campaigning to have the City Council declare a fiscal emergency premised primarily on purported pension projections. To maximize political support for such a declaration—which the City primarily sought to use to undermine the vested pension rights of its employees—the Mayor and his staff repeatedly asserted that by Fiscal Year 2015-16 the City's annual retirement contribution could reach $650 million, from a level of $245 million in Fiscal Year 2010-2011. In fact, as recently as February 24, 2012, in a news report on KCBS 740AM radio, Mayor Reed still stuck to the $650 million estimate.

14. Over the following four (4) months, the parties met and conferred approximately 13 times, up to October 20. During these negotiations, the parties bargained over various proposals put forth by both the SJPOA and the City regarding retirement generally, along with bargaining about the specific language of the proposed ballot measure. The parties proposals during this timeframe included:

a. Attached to this Declaration as Exhibit 7 is a true and correct copy of a September 27, 2011, Retirement Reform Proposal submitted by the SJPOA and Local 230's. With the Proposal, the Unions submitted a September 26, 2011, report prepared at their request by actuaries Bolton Partners, Inc. ("Report") regarding the savings associated with the September 27 proposal, which included a proposal to replace the current retirement plan with an alternate (less expensive) plan. Attached to this Declaration as Exhibit 8 is a true and correct copy of the September 26, 2011 Report. According to the actuaries' report, the Union's proposal would save the City more than $250 million over five years.

b. Attached to this Declaration as Exhibit 9 is a true and correct copy of the City's October 27, 2011 Revised Proposed Ballot Measure.

15. After October 31, 2011, the City refused to engage in further bargaining with the SJPOA, in spite of the fact that the SJPOA continued to make efforts to meet and confer, continued to make concessionary proposals, and never represented that any of its proposals were its last, best and final offer. In fact, the SJPOA continued to pass proposals that included monetary concessions worth tens of millions of dollars per year:

a. On November 11, 2011, Local 230 President Robert Sapien, Jr. and then SJPOA President George Beattie sent a letter to Deputy City Manager Alex Gurza enclosing a revised Retirement Reform Proposal and Proposal Addendum [as Amended November 11, 2011]. Attached to this Declaration as Exhibit 10 is a true and correct copy of the November 11, 2011 Letter and attached Proposal.

b. On November 18, 2011, Local 230 President Robert Sapien, Jr. and then SJPOA President George Beattie sent a letter to Deputy City Manager Alex Gurza regarding a revised POA/Fire Fighter Proposal. Attached to this Declaration as Exhibit 11 is a true and correct copy of the November 18, 2011 Letter.

16. The City never bargained with the SJPOA over its November 1 and 18, 2011 proposals. This is because the City continued to insist that the parties remained at impasse and that it was under no obligation to bargain.

17. During this same timeframe, on November 15-16, 2011, the parties participated in mediation in an effort to resolve their differences, but the mediation was not successful. Throughout the mediation process, the City insisted it was under no obligation to bargain with the SJPOA.

18. Prior to, during, and after the bargaining and mediation discussed above, the Mayor and the City continued to represent that the City's pension-related costs were projected to reach $650 by Fiscal Year 2015-16. However, in an interview that was released as part of a February 9, 2012 story on NBC Channel 11, Mayor Reed admitted that, all along, the sole source for the $650 million figure was an isolated oral statement by the City's Retirement Services Director, Russell Crosby. In an interview that was part of the same news story, Mr. Crosby stated that the $650 million estimation "was a number off the top of my head." He also stated that "[t]he Mayor was told not to use that number, that the number was 400 [million dollars], that was the projection." The story may be viewed at: http://www.nbcbayarea.com/video/#!/news/local/Guessing-Pensions/138995874.

19. Following mediation, the City significantly changed its ballot proposal on November 22, 2011. Attached to this Declaration as Exhibit 12 is a true and correct copy of the November 22, 2011 Revised Proposed Ballot Measure. If effectuated, it would dramatically reduce the pension benefits of SJPOA-represented Police Officers by forcing current employees into a new retirement plan that, *inter alia*, severely reduces accrual rates, dramatically increases minimum retirement age and service requirements, cuts the maximum cost-of-living adjustment in half (from 3% to 1.5%), and slashes survivorship and disability retirement benefits. Employees electing not to go into the "Voluntary Election Program," would have their salaries slashed and be required to pay 50% of existing unfunded liabilities.

20. In a November 22 email to all employees, City Manager Debra Figone described the revised ballot measure as "far different than the earlier versions." Attached to this Declaration as Exhibit 13 is a true and correct copy of the November 22, 2011 email.

21. On December 1, 2011, SJPOA President Jim Unland sent a letter containing a Revised SJPOA Retirement Proposal to Deputy City Manager Alex Gurza,

reflecting further monetary concessions by the Association. Attached to this Declaration as Exhibit 14 is a true and correct copy of the December 1, 2011 letter proposal.

22. The City never bargained with the SJPOA over its December 1, 2011 proposal. This is because the City continued to insist that the parties remained at impasse and that it was under no obligation to bargain.

23. On December 1, 2011, the independent actuary for the City's retirement plans issued an updated report with projections for prospective City retirement contributions. The report showed that the City's retirement contributions would be far less than previously estimated and far less than the City had been relying on as justification for both its proposed fiscal emergency declaration and its ballot measure. The report showed that—just for the Police and Fire Retirement Plan—the City's contributions for Fiscal Year 2012-13 would be approximately $55 million *less than* previously expected. The two-part December 1, 2011 report can be found at:

- http://www.sjretirement.com/uploads/PF/2_1itemPFNov11.pdf; and
- http://www.sjretirement.com/uploads/PF/3_1itemPFDec11.pdf

24. As a result of these developments, among others, on December 6, 2011, the Mayor was forced to withdraw his proposal to have the City Council declare a Fiscal State of Emergency.

25. On December 6, 2011, the City Council adopted Resolution 76087 approving a December 5 version of the pension reform measure to be placed on the June 2012 election ballot. This version was largely similar to the November 22 version discussed in paragraph 18 above. Attached to this Declaration as Exhibit 15 is a true and correct copy of the December 5, 2011 Revised Proposed Ballot Measure. The SJPOA was never provided with notice or an opportunity to bargain over the measure or resolution.

26. On December 9, 2011, Deputy City Manager Alex Gurza sent a letter to Local 230 President Robert Sapien, Jr. and SJPOA President Jim Unland informing them that, upon passing Resolution 76087 discussed in the preceding paragraph, the City Council also directed that City staff "invite all bargaining groups to re-engage in

mediation regarding all retirement issues, including the related ballot measure." Attached to this Declaration as Exhibit 16 is a true and correct copy of the December 9, 2011 letter.

27. On December 13, 2011, Local 230 President Robert Sapien, Jr. and SJPOA President Jim Unland sent a letter to Deputy City Manager Alex Gurza responding to the City's letter of December 9, 2011. Therein, they explained their belief that the City acted unlawfully in passing Resolution 76087 because the parties were not at impasse (as shown by their continued presentation of concessionary proposals) and the bargaining-related circumstances had changed as a result of the December 1, 2011 actuarial report (discussed above). The letter requested a resumption of bargaining in light of these developments. Attached to this Declaration as Exhibit 17 is a true and correct copy of the December 13, 2011 letter.

28. After repeated requests by the SJPOA, the City agreed to meet with the Association once in late December 2011 and once in early January 2012. However, during those meetings, the City stated its belief that the parties were at impasse and that it was not obligated to further bargain about the ballot measure or the Unions' proposals.

29. Mayor Reed admitted in a February 9, 2012 televised interview on NBC Channel 11 that the sole source for the $650 million figure was an isolated oral statement by the City's Retirement Services Director, Russell Crosby. But in an interview that was part of the same news story, Mr. Crosby stated that the $650 million estimation "was a number off the top of my head" and ***"[t]he Mayor was told not to use that number***, that the number was 400 [million dollars], that was the projection."

30. On February 21, 2012, the City's Director of Labor Relations provided the SJPOA with yet another version of the City's "Pension Plan Amendments" ballot proposition and informed the SJPOA that the City Council intended to take a final vote on March 6, 2012 to place it on the June 2012 election ballot. Attached to this Declaration as Exhibit 18 is a true and correct copy of the February 21, 2012 Revised Proposed Ballot Measure.

31. On February 21, 1012, San Jose City Manager Debra Figone sent a Memorandum to the Mayor and City Council regarding the Revised Ballot Measure. The Memorandum noted that the new version contained "many significant changes and movements from earlier drafts." Attached to this Declaration as Exhibit 19 is a true and correct copy of the February 21, 2012 Memorandum.

32. Also on February 21, 2012, the City's own retirement system's actuaries completed a report on the Police and Fire Retirement Plan, which, along with a February 8, 2012 report on the Federated Plan (for non-safety employees), estimated that the actual future projection figure for Fiscal Year 2015-16 is approximately $310 million, less than half the level on which the City has consistently represented and based its proposals. Attached to this Declaration as Exhibit 20 is a true and correct copy of the February 8, 2012 report. Attached to this Declaration as Exhibit 21 is a true and correct copy of the February 21, 2012 report.

33. On February 24, 2012, I sent a letter to Deputy City Manager Alex Gurza responding to the City's above referenced February 21, 2012 memorandum. In that letter, I noted that the February 21 Revised Proposed Ballot Measure (discussed above) contained many significant changes (as acknowledged by City Manager Figone) and that the SJPOA "had no opportunity to bargain about this new ballot language." Thus, I requested that the City meet and confer with the SJPOA over the changes. Attached to this Declaration as Exhibit 22 is a true and correct copy of my February 24, 2012 letter.

34. On February 27, 2012, I received a letter from Deputy City Manager Alex Gurza responding to my correspondence of February 24, 2012. In that letter, Mr. Gurza expressly conditioned any resumption of bargaining on the Association (1) making a concession that the City deemed, in its subjective opinion, to be "sufficient" and (2) that such concession be capable of being "ratified prior to March 6." Attached to this Declaration as Exhibit 23 is a true and correct copy of the February 27, 2012 letter.

35. On March 1, 2012, I sent a letter to Deputy City Manager Alex Gurza responding to his letter dated February 27, 2012, wherein I noted Mr. Gurza's concession

that the City had not bargained over its February 21 ballot version, and I pointed out that the City's desire to finalize its ballot proposal by March 6, 2012, did not excuse its bargaining obligation. I reiterated the SJPOA's belief that the bargaining circumstances had changed due to several positive financial developments (breaking any ostensible impasse) and that there were many areas warranting further discussion. Attached to this Declaration as Exhibit 24 is a true and correct copy of my March 1, 2012 letter.

36. On March 2, 2012, Local 230 President Robert Sapien sent a letter to Deputy City Manager Alex Gurza on behalf of both Local 230 and the SJPOA regarding "Retirement Reform." The letter enclosed a revision to the Unions' prior proposals to address the City's concern that not all represented employees would "opt-in" to the revised pension plans proposed by Local 230 and the SJPOA. The revised proposal would guarantee the same level of savings as full participation in the "opt-in" would achieve, even if some individuals elected not to "opt-in" to the new plan, through salary reductions from those individuals. Attached to this Declaration as Exhibit 25 is a true and correct copy of the March 2, 2012 letter.

37. On March 3, 2012, SJPOA President Jim Unland and Local 230 President Robert Sapien sent a letter to Deputy City Manager Alex Gurza following up on their March 2, 2012 proposal and promising to forward proposed charter language to implement the proposal in a ballot measure. Attached to this Declaration as Exhibit 26 is a true and correct copy of the March 3, 2012 letter.

38. On March 5, 2012, I received a letter from attorney Jonathan Holtzman, on behalf of the City, purporting to respond to my March 1 letter and the SJPOA and Local 230's March 2 proposal. The letter noted that the Unions had moved on many issues, but also noted a number of remaining differences between the City's February 21, 2012 Revised Ballot Measure and the Unions' new proposal. Ultimately, the letter rejected the SJPOA and Local 230's request to resume bargaining because, in the City's opinion, the timing of the proposal "render[ed] further bargaining impractical [before] March 6th—the final City Council meeting before the last date to place this measure on the

June 2012 ballot." Attached to this Declaration as Exhibit 27 is a true and correct copy of the March 5, 2012 letter.

39. On March 6, 2012, the San Jose City Council passed a resolution ordering that the "Pension Plan Amendments" ballot proposition be placed on the June 2012 ballot. The ballot measure language approved by the City Council on March 6, 2012, amends the City's charter dramatically reduces the pension benefits of SJPOA-represented Police Officers in the same ways as the prior version approved by the City Council on December 6, 2011. The February 21, 2012 version of the pension reduction ballot measure adopted by the City Council on March 6, 2012 also including new language dictating that the City would file as lawsuit seeking a declaration as to the legality of the various pension reduction provisions delineated in the measure. It was also changed from the December 2011 version to move its effective date to June 23, 2013.

40. On March 9, 2012, San Jose Mayor Chuck Reed issued a "March Budget Message for Fiscal Year 2012-2013, in which he admitted (top of page 2) that "the City Manager is now projecting a $10 million surplus for the 2012-2013 Fiscal Year." Attached to this Declaration as Exhibit 28 is a true and correct copy of the March 9, 2012 Budget Message.

41. Measure B was printed on the June 2012 ballot, and passed by the San Jose electorate on June 5, 2012. The charter amendment approved by this measure was thereafter filed with the Secretary of State. The City mailed a copy of the charter amendment thus approved to each employee of the SJPOA and indicated its intention to enforce the provisions of the charter amendment against the SJPOA.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed this 19th day of June, 2012, at San Francisco, California.

Gregg McLean Adam

EXHIBIT 1

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Press Release

Office of Mayor Chuck Reed

For Immediate Release:
April 13, 2011

Contact:
Michelle McGurk, Office of Mayor Reed
(408) 535-4840 or (408) 655-7332 (cell)

Mayor Reed and Vice Mayor Nguyen to Discuss Impacts of Pension Costs on San José Budget

San José, Calif. – Mayor Chuck Reed and Vice Mayor Madison Nguyen tonight will layout the potential impacts on community services should the City of San José's pension costs continue to spiral over the next five years.

The Mayor and Vice Mayor will speak at the annual community budget meeting in Vice Mayor Nguyen's City Council District 7. The meeting takes place at 6 p.m. at the Tully Community Library, 880 Tully Road, San José, and is open to the public.

"San José already faces devastating cuts in services starting July 1," said Mayor Chuck Reed. "It's time to attack the root causes of our structural budget deficit so we can restore police and fire services, libraries and community centers."

San José faces a $115 million budget shortfall in the fiscal year beginning July 1. By law the City must balance its budget. The City Council has asked for concessions of 10 percent in total compensation (wages and benefits) from all employees, however, this will only cover $38 million of the shortfall. The City Council is also seeking retirement reforms and other benefit changes that could offer immediate savings.

The remainder of the savings will primarily come from service cuts, including employee layoffs, with some small portion coming from new revenue. Tonight, the City Administration will lay out what those cuts could look like and how they will impact San Jose residents.

As bad as it is, the situation could get worse if retirement costs aren't brought under control. "Retirement costs are the largest single driving factor of our structural budget deficit," said Mayor Reed. "By 2015, San José will have to pay $400 million a year to cover the cost for commitments made to our employees and retirees – and that's the optimistic scenario. It's bad, and it could be worse."

San José's retirement director has projected that costs could rise to $650 million per year by fiscal year 2015-2016 if the funds don't achieve their projected 7.5%-plus rates-of-return or if actuarial factors continue to increase pension costs.

"We need our community and our employees to work together and return San José to fiscal health," said Vice Mayor Nguyen. "Rising pension costs threaten the very things that make our community a wonderful place to live, work, and raise a family: our safety and quality of life."

MORE

In March, the City Council unanimously approved a set of Fiscal Reform Guiding Principles outlined by Mayor Reed. The goal is to restore services to January 1, 2011 levels, open never-opened new libraries, community centers, fire stations, and the police substation within five years by gaining control of the structural deficit.

This will be accomplished by strategies that include:

1. Reducing compensation for existing employees. (Potential savings: $38 million)
2. Avoiding increases in retirement costs beyond the amounts paid for this fiscal year. (Potential savings: $167 million)
3. ~~Reforming workers' compensation and disability retirement systems. (Potential savings:~~ $12 million)
4. Reducing costs for sick leave payouts, vacation buybacks, and overtime pay. (Potential savings: $15 million)
5. Modifying healthcare plans and cost sharing.
6. Organizational changes and efficiencies.

The Mayor, City Council, and City Manager's office are holding community meetings in every Council District throughout the City as part of San José's community-based budget process. The complete schedule is online here: http://www.sanjoseca.gov/BudgetInfo.asp.

# # #

EXHIBIT 2

COUNCIL AGENDA: 05-24-11
ITEM: 3.5

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: City Council

FROM: Mayor Chuck Reed
Vice Mayor Madison Nguyen
Councilmember Rose Herrera
Councilmember Sam Liccardo

SUBJECT: Fiscal Reforms

DATE: May 13, 2011

APPROVED: Chuck Reed Madison Nguyen

DATE: 5/13/11

INTRODUCTION

The dramatic impacts of the budget shortfall on our community demonstrate why we have to gain control over skyrocketing retirement costs. If we act now, we can preserve the retirement benefit levels our employees and retirees have earned and accrued, and we can restore jobs and vital services.

If we fail to act, jobs and services will be decimated in a fiscal disaster and retirement benefits will be cut.

This proposal is not the only solution. It is one combination of ideas that we believe will solve the problem. We are open to other solutions, and our proposal directs staff to engage with employee groups – many of whom have said they are eager to work in partnership to solve this crisis – and to discuss alternatives that also solve the problem.

RECOMMENDATION

A. Declare a Fiscal and Public Safety Emergency

Declare a fiscal and public safety emergency and direct staff to return to the Council on June 21 with a formal declaration that describes the necessity of making fiscal reforms to avert a fiscal disaster, prevent substantial degradation of public safety and other vital city services, and maintain the integrity of our retirement system so that earned and accrued benefits can be paid to current and future retirees.

B. Amend the Charter in order to Limit Retirement Benefits and to Require Voter Approval of Increases in Retirement Benefits

Approve the City Manager's Fiscal Reform Plan and direct staff to return to the Council on June 21 with proposed changes to the Charter to implement the Manager's recommendations, subject to the following additions and limitations, all to be placed into the Charter in order to set maximum limits on benefits and other compensation that may not be exceeded without voter approval:

1. **Place Limits on Retirement Benefits for New Employees**
   Without voter approval of enhancements or increases, new employee retirement benefits shall be limited to a hybrid plan that may consist of a combination of social security, defined benefits or defined contributions but the maximum City contribution in total shall not be less than 6.2% nor greater than 9% of base salary or 50% of the costs of the benefits, whichever is less.

   Health Benefits: Medical care or health insurance for retired employees may only be provided to employees who have 20 years of service or more or to employees who receive a service disability retirement. Employees will pay a minimum of 50% of the cost of retiree healthcare.

   Retirement Provisions: If a defined benefit plan is included it must be based on actuarial assumptions that are risk-free for the City and the employees and the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and fire fighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement.

2. **Place Limits on Retirement Benefits for Existing Employees**
   Without voter approval of enhancements or increases, retirement benefits for existing employees shall be limited as follows:

   Slow Down the Accrual Rate: Benefits earned and accrued benefits to date shall not be reduced but additional pension benefits shall accrue at a maximum rate of 1.5% per year of service.

   Increase the Age of Eligibility: The age of eligibility for service retirement for existing employees shall increase by six months annually on July 1 until the retirement age reaches the age of 60 for police officers and fire fighters and 65 for all other employees. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement.

   Increase Years of Service for Medical Benefits: The years of service required to qualify for health insurance benefits after termination of service shall increase by six months annually on July 1 until it reaches 20 years, except for employees who receive as service disability retirement. Employees will continue to pay a minimum of 50% of the cost of retiree healthcare.

3. **Place Limits on Benefits for Existing and Future Retirees**
   Without voter approval of enhancements or increases, retirement benefits for existing retirees shall be limited as follows:

   Slow the Rate of Increase: Increases in pension payments to retirees shall be limited to the increase in the Bay Area CPI and shall not exceed 1% per year.

Restrict Bonuses: Bonuses or other supplemental payments may be made only to long term service retirees or disability retirees whose household income falls below the poverty level (extremely low income) and shall not be funded from plan assets.

4. **Place Additional Limitations on Growth in Retirement Benefits if the Fiscal and Public Safety Emergency Gets Worse**
At any time the city pension or retiree health care plans have unfunded liabilities for pension or retiree healthcare greater than those existing on June 30, 2010, the following limitations shall be in effect for existing employees who have not opted into the benefits program for new employees, except upon prior approval of the voters:
    a. Retirement benefits shall not continue to accrue beyond the minimum benefits specified in the Charter, Article XV.
    b. Calculation of benefit payments shall be based on a 3-year average as specified in the Charter, Article XV.
    c. The age of eligibility for payment of service retirement benefits shall not be less than the retirement age specified in the Charter, Article XV.
    d. Benefits shall not be increased after retirement.
    e. Employees' share of the costs to amortize any unfunded liabilities greater than those existing on June 30, 2010, shall be 50%, unless they have opted into the benefits program for new employees.

At any time the city pension or retiree healthcare plans have unfunded liabilities for pension or retiree healthcare greater than those existing on June 30, 2010, bonuses, increases, or supplemental pension payments to retirees shall not be allowed, except upon prior approval of the voters.

These temporary provisions shall remain in effect until the unfunded liabilities have remained below the level of June 30, 2010 for three consecutive years.

5. **Implementation Provisions**
    a. All pension and retiree healthcare plans must be actuarially sound and unfunded liabilities shall be determined annually through an independent audit using standards set by the Government Accounting Standards Board.
    b. All of the above Charter amendments shall be severable but if any of the above provisions are or become illegal, invalid or unenforceable as to existing employees, then the existing employees' share of the costs to amortize any unfunded liabilities shall be 50%, unless they have opted into the benefits program for new employees.
    c. If any of the above provisions are or become illegal, invalid or unenforceable as to retirees, then all benefit enhancements or increases granted to retirees since the date of their retirement shall be eliminated.
    d. Existing and new employees will continue to pay a minimum of 50% of the cost of retiree healthcare.

e. The City Council shall retain its power to amend or change any retirement plans under Charter sections 1500 and 1503 and no ordinances, agreements, policies or practices may eliminate that power without approval by the voters.

C. AMEND THE CHARTER IN ORDER TO REQUIRE VOTER APPROVAL OF INCREASES IN OTHER BENEFITS UNTIL THE EMERGENCY HAS PASSED AND ESSENTIAL SERVICES HAVE BEEN RESTORED

1. **Preserve and Restore Essential Services**

The following services are essential to the safety and quality of life for San Jose residents: police protection, fire protection, street maintenance, libraries, and community centers. Any time these essential services are not provided at or above the levels of January 1, 2011, or any time the libraries, community centers, fire stations or police substation built or under construction on January 1, 2011 are not operational, or any time the pension plans have unfunded liabilities, the Mayor, the City Council, the City Manager, the other Officers of the City, the Board of Arbitrators, and other arbitrators are prohibited from making or approving any contract, memorandum, agreement, award, grant, decision, resolution or ordinance to allow or require the City to do any of the following, except upon prior approval by the voters:

a. Create or increase an unfunded liability for pensions, healthcare or other post employment benefits.

b. Pay for unused sick leave or unused vacation time, except as required by state or federal law.

c. Increase compensation for members of bargaining units after contracts expire.

d. Give automatic step increases or other raises for time in the job that are not based on performance.

e. Use hours not worked in determining eligibility for overtime or for retirement benefits.

f. Pay overtime to executive, professional, or administrative employees or to other employees who are exempt from overtime requirements under the Fair Labor Standards Act or who are otherwise exempt from the Act.

g. Pay workers compensation benefits for disability on top of disability retirement benefits without an offset to eliminate duplication of payments for the same cause of disability.

h. Pay workers compensation benefits beyond what state or federal law require.

i. Allow existing or former employees to make decisions to grant workers compensation or disability benefits for existing or former employees.

j. Calculate retirement benefits on any compensation other than actual base salary paid or years (2080 hours) actually worked for the City of San Jose, except as required by state law.

k. Make layoff or rehiring decisions without considering individual employee performance.

l. Pay for more than 50% of the increase in the cost of healthcare benefits.

D. OUTREACH TO EMPLOYEES
Direct staff to meet and consult with bargaining units on these potential ballot measures. The outreach plan should include a process to engage immediately with those unions willing to acknowledge the retirement cost crisis and which desire to engage constructively with alternative solutions.

E. PREPARE BALLOT MEASURE LANGUAGE
Direct staff to return to Council on August 2 with ballot measure language to submit to the Registrar of Voters for a possible election in November to change the Charter to implement the above recommendations, as may have been modified through the meet and consult process, providing that provisions that are in conflict with express terms of negotiated contracts in effect at the time of voter approval shall be implemented on the expiration dates of those contracts.

F. SURVEY VOTERS ON POTENTIAL TAX MEASURES
Direct staff to prepare to survey voters to determine if implementation of these fiscal reforms increases the level of support for a potential tax increase.

BACKGROUND

Over the past decade, vital city services have been reduced repeatedly because costs per employee have grown dramatically. San Jose's unfunded liabilities for retirement benefits have grown by billions of dollars and have driven up San Jose's annual retirement costs by more than $190 million since 2000 ($63 million in 2000 to $255 million in 2011).

Last year we reduced our work force by 800 positions, down to 4200 general fund workers. Our police and fire departments today have about 2400 employees. Now we are facing another huge budget shortfall and are likely to have to cut another 600 positions, including police officers and fire fighters, dropping our general fund staffing down to 3600 positions.

If left unchecked, by 2016 retirement costs will increase, even using optimistic assumptions, to $400 million per year. That increase in costs will require additional staffing reductions that will drive our general fund staffing down to 3000 employees.

Unfortunately, even greater increases in retirement costs are likely if actuarial assumptions - such as life expectancy, retirement ages or rates of investment return - are modified by the retirement boards to reflect modern conditions. As discussed at our study session on February 14,[1] our retirement costs could jump to $650 million per year by 2016 as assumptions are updated.

Costs could also go up dramatically as new federal accounting standards are adopted. For example, the Governmental Accounting Standards Board (GASB) is currently considering accounting rules that would lower the permissible discount rate (*Pension Accounting and Financial Reporting by Employers*[2]). That change could result in an increase in annual costs to

[1] View the Council meeting online at http://sanjose.granicus.com/MediaPlayer.php?view_id=22&clip_id=4824. The discussion regarding future retirement costs is at 2 hours, 9 minutes into the meeting.
[2] The full report, *Preliminary Views of the Governmental Accounting Standards Board on major issues related to Pension Accounting and Financial Reporting by Employers*, is online at: *http://gasb.org/cs/ContentServer?c=Document_C&pagename=GASB%2FDocument_C%2FGASBDocumentPage&cid=1176156938122.*

amortized unfunded liabilities "by 150 to 200 percent above current levels." (*New Proposals for Pension Books: GASB's potential accounting rules may clobber employers' budgets*, by Girard Millar, Governing, May 20, 2010[3]).

Additional huge cost increases to pay for unfunded liabilities would result in enormous reductions in staffing, destroying our ability to protect the public and preserve the quality of life for the people of San Jose. If we fail to act, and retirement costs grow to $650 million by 2016, the ranks of general fund employees will shrink down to about 1600 workers. Even though it is not the worst case scenario, dropping to 1600 general fund workers would have a devastating impact on our city and leave us unable to provide vital services.

Neither we nor our retirees can afford to take the risk these costs will continue to escalate, pushing the City or the pension funds into insolvency, and putting the reduction of retirement benefits in the hands of a bankruptcy judge.

We must take bold and decisive action to make the changes necessary to save our city from a fiscal and service delivery disaster.

The Charter allows the Council to make changes to retirement benefits and we must exercise that power:

> "...*the Council may at any time, or from time to time, amend or otherwise change any retirement plan or plans or adopt or establish a new or different plan or plans for all or any officers or employees.*" SECTION 1500

To make those changes, outlined in the recommendations above, a new section should be added to the Charter as ARTICLE XIX PENSION REFORM, FISCAL STABILITY AND PROTECTION OF ESSENTIAL SERVICES, to help stop spiraling cost increases, avert fiscal disaster, protect the integrity of the retirement system, and put San Jose on the path to rebuild the police force, fully staff fire stations, maintain streets, and keep libraries and community centers open.

These proposed fiscal reforms would not deprive employees of benefits that have been earned and accrued, but they are reasonable and necessary to enable the city to pay for benefits that have been earned and accrued without destroying the city's ability to protect public safety and provide basic services for the people of San Jose. Our inherent power to make reasonable changes to the pension system, without taking away earned and accrued benefits, in order to maintain the integrity of the system has long been recognized by the California courts.

Some of these fiscal reforms may impact expectations of increases in future benefits that are viewed by some of our employees as vested and, therefore, unchangeable. Yet, these fiscal reforms are appropriate, reasonable, temporary and necessary to resolve this grave fiscal crisis. Thus, they are within the constitutional range of power of the City to protect the vital interests of our community, even if vested contract rights may be affected.

The fiscal emergency that we are dealing with requires action. Our power to act "to protect the lives, health, morals, comfort and general welfare of the public" is recognized under the United States and California Constitutions, even if contract rights are impaired (see *Declarations of*

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[3] Read the article at: http://www.governing.com/columns/public-money/new-gasb-proposals-pension-bookkeeping.html

Fiscal Emergency: a Resurging Option for Public Entities Attempting to Deal with the Current Economic Climate, California Public Law Journal, Vol. 34, No. 1, Winter 2011[4]).

Some people believe that the pension crisis is imaginary, that we have only to wait until the market goes back up and we'll be fine. That's simply wishful thinking. The $155 million payment to the retirement funds the City made this year was not imaginary. The $250 million payment the city must make next fiscal year is not imaginary. The hundreds of jobs that were eliminated this year were not imaginary. The hundreds of employees who will lose their jobs in the next fiscal year are not imaginary.

~~Such erroneous characterizations of our fiscal crisis demonstrate why it is necessary to take these measures to the voters to allow them to prevent a disaster.~~

Of course, if market gains result in the issue resolving itself by June, as some assert, some of the temporary measures may not be necessary for very long.

Placing these fiscal reforms on the ballot will allow the people of San Jose to decide these critical matters that will have a dramatic impact on their quality of life.

[4] Online at www.calbar.ca.gov/publiclaw.

EXHIBIT 3

City Council Agenda: 06-14-11
Item: 9.1

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: CITY COUNCIL

FROM: Mayor Chuck Reed

SUBJECT: JUNE BUDGET MESSAGE FOR FISCAL YEAR 2011-2012

DATE: June 3, 2011

Approved: Chuck Reed   Date: 6/3/11

RECOMMENDATION

I recommend that the City Council and Redevelopment Agency Board:

1. Approve the direction outlined in this memorandum for purposes of adopting a final budget for Fiscal Year 2011-2012.

2. Direct the City Manager and the Redevelopment Agency Executive Director to implement the steps outlined in this memorandum to prepare for closing the projected budget shortfall for Fiscal Year 2012-2013.

3. Adopt a resolution authorizing the City Manager and the Redevelopment Agency Executive Director to negotiate and execute agreements for projects approved in the Mayor's Budget Message when amounts exceed the City Manager's or Executive Director's existing contract authority.

4. Authorize the changes proposed in the following Manager's Budget Addenda and incorporate them in the Adopted Budget, except in cases where the Addenda are superseded by the contents of this Budget Message.

MBA#	TITLE
6	Recommendation on the Proposed 2012-2016 Capital Improvement Program
8	Tier 2 Police Sworn Contingency Plan
9	Recommendation for the 2011-2012 Capital Budget for Sharks Ice at San Jose
10	HP Pavilion at San Jose Capital Budget Recommendation
11	2012-2016 Proposed Capital Improvement Program - Water Pollution Control Public Art Allocation
13	Planning Expedited Coordinated Review Fee
16	Arena Authority Funding
17	Office of the City Manager Staffing Reorganization
19	Mexican Heritage Plaza Funding
20	Solid Waste Enforcement Fee and Code Enforcement Staffing
23	Team San Jose 2011-2012 Performance Measures

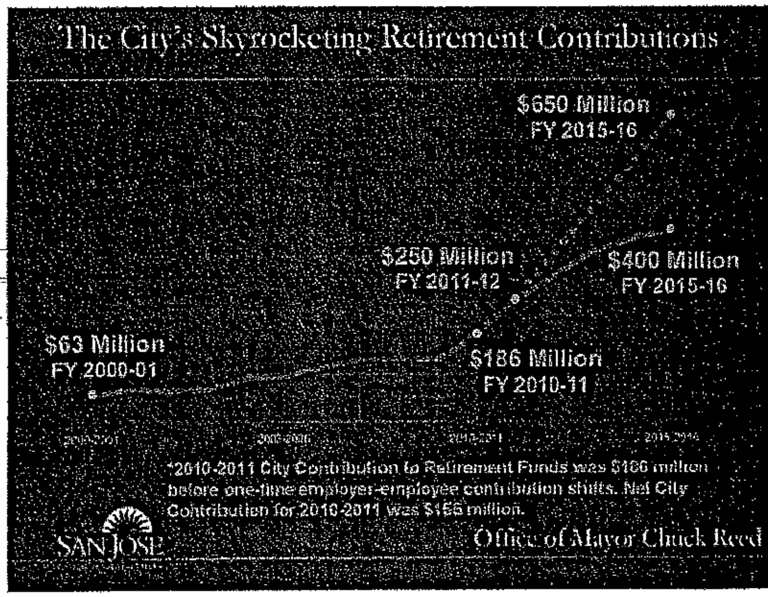
25 Incentive Program Exploration for Tenant Improvements of Existing Buildings
27 Bascom and Edenvale Community Center Reuse Update
30 Medical Marijuana
31 Fire Department Expedited Inspection Fee
33 Senior Nutrition Program Transition
35 Strong Neighborhoods Initiative
36 Legal Services - Environmental Services and Public Works Capital Projects
37 ESD Treatment Plant - Capital Limit Dated Positions
38 Enterprise Zone Program
39 Graffiti Eradication Alternative Service Delivery Proposal
40 2012-2016 Proposed Capital Improvement Program - Public Art Allocations in Various Programs
41 Alternative Service Delivery Proposal - Parks, Landscape, and Custodial Services
43 Development Services - Working at the Speed of Business
45 SAFER Grant
47 2011-2012 Rebudgets/Clean-Ups

INTRODUCTION

Over the last decade, San José has had 10 straight years of escalating budget shortfalls. Throughout this decade, our costs per employee have continued to go up - both in years when our revenues rose and when they shrank. Wages, healthcare costs, and other costs have increased over the past decade, while City services have been reduced.

The single biggest expense has been the growth in retirement costs. San José's unfunded liabilities for retirement benefits grew by billions of dollars, driving up the City's contributions to the retirement system by more than $190 million since 2000 ($63 million in 2000 to $255 million in 2011).

Unfortunately, the huge increase to fund retirement costs to date is just beginning. Using the most optimistic assumptions, retirement costs, if left unchecked, will increase to $400 million per year by 2016 – or almost 30% of the General Fund - and will continue to go up for another 10 or 15 years. Even greater increases in retirement costs are likely if actuarial assumptions, such as life expectancy, retirement ages, or rates of investment return, are modified by the retirement boards that are independent from the City and have fiduciary obligations to modernize assumptions and keep the plans solvent. That could cause retirement costs to jump to $650 million per year by 2016.



<u>Preparing to Close a $100 Million Shortfall in 2012-2013</u>

I want to thank our entire workforce for giving up ten percent in total compensation. I realize that it is a significant sacrifice for our employees, but is has allowed us to save hundreds of jobs and critical services throughout the community.

Last year we reduced our workforce by 800 positions, down to 4,200 General Fund employees. With this budget we have to cut another 600 positions, including police officers and fire fighters, dropping our General Fund staffing down to 3,600 positions.

Due primarily to another huge increase in retirement costs next year we expect at least a $78 million shortfall. That number is highly likely to grow by $20 million or more when the retirement boards consider the recommendations from their actuaries and set the retirement contribution rates for 2012-2013. As a result, a year from today we will be faced with cutting hundreds more jobs and once again cutting vital City services to close a $100 million shortfall.

Such cuts are unacceptable, but they can be avoided if we get control of our rising expenses and overhaul the way San José provides services. The City Council's action on May 24th in approving the Fiscal Reform Plan gives us the road map to get there, but most of the savings from retirement reforms are unlikely to be achieved in time to help us in 2012-2013, leaving us with a limited menu of options to close a $100 million gap in 2012-2013 without cutting services:

- Asset sales and other one-time funds
  ($25 million)
- Fiscal reforms: SRBR, sick leave, workers compensation, vacation
  ($16 million in 2012 per the Fiscal Reform Plan)
- Tax increases
  ($36 million per the Fiscal Reform Plan)

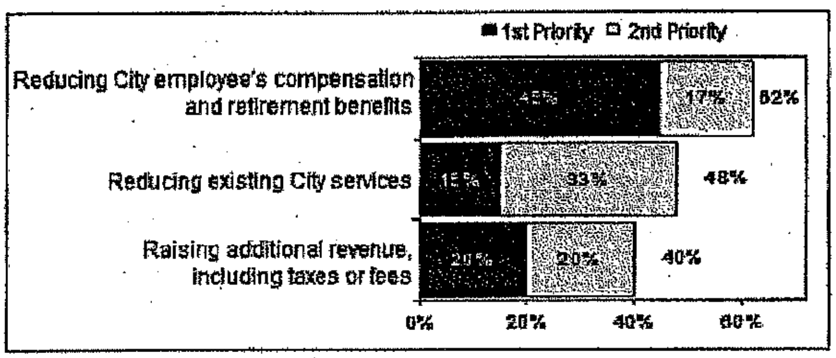
- Contract out additional services
  ($20 million)
- Increase employees cost share for unfunded pension liabilities
  ($20 million in 2012-2013 for employees without contracts)
- Fiscal reforms: overtime and retiree healthcare
  ($15 million per Fiscal Reform Plan in 2013-2014, could be accelerated)

In order to prepare for the 2012-2013 budget and allow potential savings to be considered by the City Council as part of the March 2012-2013 Budget Message, I recommend we direct the staff to accelerate the process for asset sales and accelerate the analysis of contracting out opportunities in addition to the other recommendations in this Message. In combination with the implementation of the Fiscal Reform Plan and the other recommendations in this Message, we could avert the need to cut services in 2012-2013.

BACKGROUND

Community Budget Survey

Since taking office in 2007, we have worked closely with neighborhoods and residents to obtain their input throughout the budget process each year. This year, we surveyed more than 900 residents about their budget priorities survey and held meetings at which hundreds of residents gave input on service priorities and different budget scenarios. Residents were asked to indicate which strategies the City should pursue. The chart below summarizes residents' preferred approach to balancing the budget.



Residents were also asked their thoughts on potential reductions in this year's budget. A majority of respondents found it "somewhat" or "completely" acceptable to make the following potential reductions in spending:

- Reducing public information desk hours at the police station. (74%)
- Reducing the number of days or hours that community centers are open. (67%)
- Deferring the opening of the newly constructed South San José Police Substation. (65%)
- Reducing the number of park rangers for the City's regional parks. (63%)
- Reducing money the City gives non-profits and charities to support their services. (63%)
- Reducing the number of days that libraries are open. (61%)

Neighborhood Association and Youth Commission Priority Setting Session

At the Fifth Annual Neighborhood Association and Youth Commission Priority Setting Session, more than 100 residents spent 3.5 hours prioritizing City services. Participants were comprised of members of the city's neighborhood associations, Neighborhood Commission, and Youth Commission.

Residents reached general consensus to support proposals related to public safety, quality of life, and services that residents could not do on their own. Proposals with low support were those considered to have other funding possibilities (such as donations from corporations or local businesses and philanthropic or government grants) or those that residents thought could be addressed with volunteers.

Residents were reluctant to cut police and fire resources, but were willing to look at efficiencies. For example, residents did not want to eliminate any more fire engines, but they were willing to reduce staffing on fire trucks from five to four personnel. Services that affected quality of life and services which citizens could not do on their own were top priorities for residents. Residents prioritized code enforcement, pavement maintenance, libraries, community centers, and anti-graffiti staffing.

2011 Community Budget Meeting Summary

Community budget meetings were held in each Council District to provide residents with an opportunity to learn about and discuss the budget. An estimated 800 people attended to speak directly to and share their thoughts with the Mayor, their Councilmember, and City officials.

Most of the questions centered on pension reform. Residents wanted to better understand the pension problem and ways it might be fixed.

Residents' concerns also focused on quality of life issues. Throughout the City, residents stated that libraries, community centers, and school liaisons should not be cut from the budget. Participants were interested in outsourcing City jobs, but had frequent questions about the potential outsourcing of graffiti abatement and whether volunteer programs for graffiti abatement would continue if the program was contracted out. Residents asked if volunteer programs could be expanded to other areas such as school crossing guards and library staffing.

Attendees also shared numerous ideas for cutting costs, including making City facilities more energy efficient, cutting the number of City vehicles, and reducing crossing guards. Participants also suggested revenue enhancements such as placing a tax-increase measure on the ballot and/or increasing certain City fees. A few attendees suggested increased audits of City government to find more efficiencies and costs savings.

INVESTMENT AND REDUCTION STRATEGIES

1. Neighborhood Services and Public Safety

a. **Maximize Police Officers on the Streets:** A significant priority should be that the Police Department staffing model continues to evolve and emphasizes maximizing the number of police officers on the streets and in the neighborhoods. This is especially important given the magnitude of reductions that will be implemented in 2011-2012, and critically important as the Police Department prepares for 2012-2013 and the continued escalation in personnel and retirement costs.

The City Manager is directed to issue a plan by no later than January 2012 to the City Council, through the Public Safety, Finance and Strategic Support Committee. The plan should analyze and discuss the current state of the Police Department, review the significant organizational changes already implemented and discuss their effect, and state how additional strategies will be implemented that achieve the goals of maximizing the number of officers on the streets and covering the increase in department personnel costs. The plan shall consider, at minimum, management strategies such as span of control, unit consolidations, use of collateral assignments for specialized units, command staff reorganization, and use of reserve officers and potential use of community service officers. It shall also explore cost recovery for services provided to other jurisdictions and more strategic use of regional taskforces that may reduce our operating costs.

According to the City Manager's Budget Office, the 2010-2011 third quarter Sales Tax receipt should be available within two weeks. If actual receipts are above estimated levels, the City Manager is directed to immediately bring forward a Manager's Budget Addendum to fund as many additional Police Patrol Officers as possible as part of 2011-2012 budget adoption consideration.

b. **Staffing for Adequate Fire and Emergency Response (SAFER) Grant:** During these challenging budget times, the City should seriously evaluate every opportunity to leverage grant funding to support critical public safety services. Through a $15 million grant award from the Federal Emergency Management Agency (FEMA) and Department of Homeland Security (DHS), the City has an opportunity to restore 49 firefighter positions in Fiscal Year 2011-2012. This would allow the City to fund the 5th engine company subject for elimination on July 1, staff an additional engine or truck company, preserve the engine company stationed at the Airport, and add 7 relief firefighter positions. While the grant award does carry certain conditions, FEMA has provided the City with significant accommodations and flexibility to help minimize the risk of accepting the award. The City Manager is directed to accept the *Staffing for Adequate Fire and Emergency Response (SAFER)* grant award and implement the budget amendments outlined in MBA #45.

c. **Library Branch Hours Restoration:** From Bond measures to library parcel taxes, San José residents have voted to support their branch libraries. The proposed budget reduced library service to three days per week. This level of service would adversely affect thousands of residents. I recommend that we restore services to our branch libraries to 4 days per week as Councilmembers Herrera and Rocha have recommended. In bleak economic times, libraries see a significant increase in usage, which makes them an essential service for our residents. The City Manager is directed to allocate net $3,634,000 to restore a day of branch library service to the Library Department. Funding for these hours should come from other savings identified in this Message and from $1,000,000 in the Library Parcel Tax Unallocated Reserve.

d. **Senior Nutrition and Wellness:** The Senior Nutrition Program provides healthy meals and social activity to San José's elderly residents. Through this program, seniors receive nutritious meals and social interaction that prevents them from being isolated. Together with the many social services that support this program, seniors are able to live more active and independent lives. The City, in collaboration with the Senior Nutrition Task Force, has accepted a recommendation that will maintain senior nutrition services at the 13 current City sites for 2011-2012 at a level of $550,000. This program will be offered under a new model in 2011-2012 with support from the City, County of Santa Clara, and community-based organizations. Several Councilmembers have requested additional funds to continue wellness programs for CBO and City operations. The City Manager is directed to allocate $400,000 from the remaining HNVF Competitive Fund to fund senior wellness.

   Further, Vice Mayor Nguyen and Councilmember Liccardo have requested that the City ensure that every City-owned center with a Senior Nutrition program also has City staff support and coordination to provide socialization services to seniors, as well as to coordinate volunteers, non-profit providers' schedules, and keep close communication with neighborhood groups. The City Manager is directed to fund 2 full-time Recreation Specialists from savings identified in the Message.

e. **Fire Apparatus Replacement:** Maintaining adequate funding for replacement of Fire Apparatus is necessary to preserve the safety and effectiveness of Fire Rescue and Medical Services throughout the City. After further review, it was determined that one of the Fire Apparatus scheduled for replacement will benefit Community Development Block Grant (CDBG) eligible areas. Therefore, the City Manager is directed to use $550,000 of CDBG funds for the purchase of one Fire Engine and reduce the General Fund Fire Apparatus Replacement appropriation to fund other costs identified in this Message.

f. **Downtown Nightlife:** Direct the City Manager and City Attorney to continue to develop an ordinance to amend Title 6 - Public Entertainment Ordinance to authorize a change in the fee methodology for the Public Entertainment Business Permit charged to public entertainment businesses and parking lot owners operating in the Downtown Entertainment Zone to include costs related to police enforcement of the Public Entertainment Permit Ordinance. This should be brought to the Community and Economic Development Committee in the fall and be in place in time to generate funds for the 2012-2103 budget.

   In 2009, the City Council approved a new Entertainment Zone Policing Model (EZPM) and Cost-Sharing Model; however the cost-sharing model has not yet been implemented for a variety of reasons. The new EZPM has been in effect for two years, already saving nearly $300,000 annually. Savings have been realized by increased business commitments to funding additional private security, increased collaboration between the City and nightlife businesses, and increased server training for all nightlife business employees. The EZPM has had a successful start and has been well received by downtown residents, businesses, and visitors.

g. **Foreclosure Fines:** San José currently has a zero tolerance approach for lenders that do not keep their foreclosed homes up to code. This approach means banks are cited for the first violation and fined if the problems are not immediately rectified. The Code Enforcement Officer positions reinstated in this Message will allow for the Department of

Planning, Building and Code Enforcement to be proactive in identifying and fining lenders that allow foreclosed properties to become blighted. The City Manager is directed to continue these efforts with the additional Code Enforcement Officers that are added in this Message.

h. **Downtown College Prep:** The City Manager is directed to extend the current Downtown College Prep loan repayment approved in Fiscal Year 1999-2000 for an additional two years. Downtown College Prep opened as a charter high school in 1999 with a City startup loan of $600,000. The school has garnered national recognition for its high program standards and exemplary levels of achievement by its students and 95% of all Downtown College Prep graduates have been admitted to four year colleges. The City Manager is further directed to review opportunities through incentives to encourage development of an eastside campus.

i. **Downtown Holiday Events Funding:** Christmas in the Park and Downtown Ice bring more than half million people to the Downtown each year, creating a total economic impact of $15.8 million. Both events lost City and Redevelopment Agency funding of more than $300,000. Councilmember Liccardo and I are currently working to raise private-sector funds for these events, and both the Downtown Association and the Christmas in the Park Board have engaged in private fundraising. Both all-volunteer boards need additional time to "ramp up" to be able to sustain the new service models. The City Manager is directed to allocate $100,000 to support these events. $25,000 should come from the General Purpose Parking Fund and $75,000 should come from the Integrated Waste Management Fund to support these Zero-Waste events and educate the community on reducing waste.

j. **Park Rangers:** Park Rangers are key to helping keep our regional parks safe and clean. Councilmembers Liccardo, Herrera and Pyle have identified a need and have requested additional support for our Trails, Guadalupe River Park, and Lake Cunningham. The City Manager is directed to add two additional Park Rangers ($185,000) to be funded from savings identified in this Message. The Park Rangers will retain the flexibility to deploy throughout our park and trail system with an emphasis on the parks and trails identified by these Councilmembers.

k. **Lake Cunningham Skate Park and Marina:** The Lake Cunningham Skate Park and Marina provide valuable recreation opportunities to the residents of District 8. Users of these facilities understand the need for budget reductions and are pursuing private fundraising efforts to support the Skate Park and Marina. Councilmember Herrera has requested one-time funding to allow services at the Lake Cunningham Skate Park and Marina to temporarily continue until the fall to give the supporters an opportunity to fundraise during the summer peak season. The City Manager is directed to allocate $117,500 to support these efforts from cost savings identified in this Message.

l. **Anti-Graffiti:** Contracting out Graffiti Abatement provides the City with an opportunity to have an enhanced level of service at a reduced cost. We will save approximately $613,000 with this proposal. In addition, all graffiti will be eradicated within 24 hours, digital photos will be taken before and after the graffiti is cleaned up to help support law enforcement efforts, exact paint matching will be provided for eradications, and residents will receive real time communications. By retaining 3.75 City positions, the Department of

Recreation and Neighborhood Services will continue its programs that provide opportunities for community involvement/volunteer coordination and enforcement. The City Manager is directed to adopt MBA #39 and allocate the additional savings to fund other additions contained in this Message.

m. **Airport Police Services:** In May 2010, the City Council approved the Airport's Competitive Strategic Plan, which included direction to evaluate alternative methods of delivering services that could reduce the Airport's cost per enplaned passenger, including consideration of more cost-effective methods for providing law enforcement services at the Airport. The Airport received nine proposals for contract law enforcement services and an evaluation panel representing City staff, the airlines, and other airports evaluated and scored the proposals, and found the Santa Clara Sheriff's Office as the proposal to be most advantageous to the City. The Sheriff's proposal costs $4.4 million annually, which is a reduction from the 2011-2012 Proposed Budget annualized San José Police Department cost of $5.4 million. By January 31, 2012, the remaining staffing in the Airport Police Division is scheduled to be eliminated. The City Manager is directed to consider a hybrid security system at the airport that could utilize some San José police officers. Specifically, the proposal should analyze whether or not a hybrid system could mitigate any challenges in coordination and be brought to the Public Safety, Finance and Strategic Support Committee. Additionally, any savings generated from the passage of potential fiscal reforms on the November ballot should be considered to keep Airport security under the San José Police Department. (BD# 44 Constant)

n. **Regional Public Safety Communications:** San José has a long history of support for improvements to the communications systems for police, fire, and other first responders. Whether it is the possibility of a major earthquake or other natural disaster, or the potential of an attack on Silicon Valley's vital high-technology, defense, and economic infrastructure, our region has long been at risk.

Since late 2010, representatives from many of the 10 Bay Area counties and a number of cities have worked together to develop a Joint Powers Authority (JPA) to govern the "Bay Area Regional Interoperable Communications System (BayRICS)." BayRICS would be poised to provide governance and structure at the regional level when this moves forward. I recommend funding for participation in the BayRICS JPA and for part-time staffing support to continue work with the City Manager and Mayor's Office on this program through December. The City Manager is directed to allocate $74,000 towards these efforts from savings identified in this Message.

o. **Code Enforcement:** The proposed budget eliminates three General Code Enforcement Inspectors. Should this happen, the City's ability to respond and assist with neighborhood quality-of-life complaints will be severely compromised. In addition to the Code Enforcement Officer add outlined as part of MBA #20, the City Manager is directed to reinstate another General Code Enforcement Inspectors at a cost of $116,000 to ensure timely response to neighborhood quality complaints and proactive code enforcement services are continued. Funding should come from other savings identified in this Message.

p. **Crossing Guards:** The safety of our school children remains a top priority for San José residents, as well as the City Council. During meetings with superintendents at the Schools/City Collaborative, the superintendents stated that this was the most important service the City provides for the schools and is their Number One priority. The City Manager has recommended savings of $353,000 by eliminating low priority intersections. Transportation Index studies and traffic counts don't always tell the full story about safety at intersections. The City Manager is directed to allocate $75,000 to staff additional priority intersections. The City Administration should work with and seek input from Council Offices and Schools on potential locations.

q. **La Raza Study:** La Raza Roundtable is in their second year of addressing the problems involving the overrepresentation of Latinos in the Criminal Justice, Juvenile Justice and Juvenile Dependency Systems within the City of San José. Since the beginning of their efforts, the Police Department has reviewed and changed their tow policy, the District Attorney's Office has reviewed and is considering changes to their policy on prosecuting unlicensed drivers, school superintendants are re-evaluating their zero tolerance policies around student discipline, and Juvenile Probation is in the process of evaluating their practices regarding violations of probation. The City Manager is directed to allocate $50,000 from savings identified in this Message to continue these efforts and match funding from Santa Clara County.

r. **Safe Schools Campus Initiative (SSCI):** The Safe Schools Campus Initiative Program is a partnership between the City, School Districts, Police Department, and County Probation and addresses youth related violence at schools as part of the Mayor's Gang Prevention Task Force. The proposed SSCI program reductions will result in the elimination of this program at middle schools. The City Manager is directed to allocate $302,424 to restore this service.

s. **Chaplaincy Program:** The San José Police Department Chaplaincy Program involves more than 20 volunteer chaplains and citizens who provide support services to police officers, their families, and citizens in times of need. Services include crisis counseling, and support for events such as graduations, trainings, and funerals. The City Manager is directed to appropriate $20,000 for this program.

2. **Community and Economic Development Services**

a. **Santa Clara Valley Habitat Conservation Plan:** At the March 3, 2011 Study Session, several concerns were raised regarding the scale and the costs and modest benefits of the proposed Plan. As it is currently written, the proposed Plan puts San José in a position of competitive disadvantage with cities of the Silicon Valley that are not part of the Plan. The City Manager is directed to suspend support and funding for the Plan after the EIR is certified, and until such time as the costs and benefits are reassessed and an effort to develop a more regional Plan is achieved.

b. **Sign Ordinance Planner:** The comprehensive update of San José's 1992 Sign Ordinance is a work in progress. Several amendments have been approved by City Council. At the February 2011 Budget Priority Study Session, the Sign Code update was ranked as a top priority by the City Council. The City Manager is directed to add 1.0 FTE Planner at a cost of $129,000 to work exclusively on the revision to the Sign Ordinance and complete the revision for City Council review in fall/winter 2011, and then on other ordinances of highest priority to the City Council.

c. **1% Public Art Fund:** City ordinance guiding the 1% public art requirement for City capital improvement projects excludes the cost of rehabilitation or maintenance, seismic retrofits, site remediation, acquisition or installation of equipment, and environmental review. Public art funds should be prioritized for projects that are integrated into the City's long-term planning initiatives and are located in regional destinations, high-traffic transportation corridors, pedestrian areas, and community-gathering places. The City Manager and City Attorney are directed to review and report back to the City Council before funds are spent for art at the Water Pollution Control Plant to ensure that all such spending complies with the Ordinance. Also, the Public Safety, Finance and Strategic Support Committee should annually review funds appropriated for art before the dollars are spent.

d. **Other Cost Saving Opportunities:** Potential additional savings exist in the following line items. The City Manager is directed to reduce the General Fund Public Art Maintenance and Cultural Affairs non-personal/equipment funding by $100,000, liquidate the remaining $135,000 Arts Relocation balance in the Transient Occupancy Tax Fund and redirect $50,000 towards Public Art Maintenance in the Transient Occupancy Tax Fund, reduce the General Fund Convention and Visitors Bureau Marketing Budget by $100,000, reduce the Mayor's Education Programs by $136,000, reduce the Mayor and City Council Travel by $25,000, reduce the Green Vision 2010-2011 rebudget by $171,000, reduce the Energy Efficiency Program by $100,000, and reduce unemployment insurance funding by $960,000 through the restoration of positions in this Message.

e. **Team San Jose:** The City Manager is directed to work with Team San José on a plan to achieve 10% total compensation reductions for Team San José employees.

3. **Strategic Support**

a. **Boards and Commissions:** Potential savings can be achieved by reducing funding allocated to City boards and commissions. The City Manager is directed to reduce the following appropriations to generate $50,000 in savings to fund reinstatements identified in this Message.

- Reduce the Elections Commission funding by $30,000
- Reduce the Civil Service Commission funding by $6,000
- Reduce the Planning Commission funding by $14,000

The City Clerk is further directed to work with the Rules Committee to review all commissions for opportunities to achieve savings through consolidation or elimination. This should be brought to the Rules Committee during the fall.

b. **Retirement Reform Election:** There may be a need for an election this November to deal with Retirement Reform. A retirement reform election later this year may have a reduced cost due to the likely possibility of being on the same ballot as a possible statewide election on revenue measures. The cost for a stand alone election is estimated to be $3.4 million. The City Manager is directed to allocate funding for a potential November election from savings identified in this Message and utilize $600,000 from funding already allocated to support 2011-12 elections for a net cost of $2.8 million. Any savings from election costs being lower than anticipated should be directed to the 2012-2103 Future Deficit Elimination Reserve.

c. **City Attorney's Office:** To assist the City Attorney's Office in meeting their staffing needs, I recommend the City Attorney and other City Council Appointees identify areas where legal services can be modified to meet budgeted staffing levels and report to the Rules and Open Government Committee in January. These efficiencies and modified duties will be detailed in the 2012-2013 March Budget Message. The City Attorney's Office should also bring to the Rules and Open Government Committee a discussion of workload priorities. Further for this current year, the following staffing additions are recommended.

   i. **Environmental Services and Public Works Capital Projects:** The City Manager is directed to restore 1.0 Senior Deputy City Attorney and 1.0 Legal Analyst to support the 5-year Water Pollution Control Plan Capital Improvement Program and the 5-Year Sanitary Sewer Capital Improvement Program. These programs will support this funding.

   ii. **Medicinal Marijuana Tax:** The City Manager is directed to restore from the medical marijuana tax revenue 1.0 Senior Deputy City Attorney, .5 Deputy City Attorney, 1.0 Legal Analyst, and .5 Legal Administrative Assistant. Potential legal challenges related to the Medical Marijuana Regulatory Program are unknown at this time. As these positions are funded through a general tax, they can and should be used to assist in offsetting other Attorney's Office reductions.

   iii. **Redevelopment Agency Support:** The Redevelopment Agency Executive Director is directed to fund and the City Manager is directed to restore 2.0 Senior Deputy City Attorneys, 1.0 Legal Analyst, and 1.0 Legal Administrative Assistant.

   iv. **Fiscal Reforms Funding for Outside Legal Counsel:** Outside legal counsel is required for work on the fiscal reforms. The City Manager is directed to allocate $150,000 for this. This funding should come from the Mayor's Office rebudget funds.

   v. **Workers Compensation Staffing:** To provide additional support so that workers compensation service may be performed, the City Manager is directed to fund $170,000 to restore .5 Deputy City Attorney and .5 Legal Administrative Assistant.

d. **City Clerk's Office:** The 2011-2012 budget proposes transferring some current Redevelopment Agency administrative functions to the Office of the City Clerk. These include agendas, minutes, records, human resources, and payroll and benefits. To assist with these duties, the City Manager is directed to add an Analyst II position ($133,700) to the City Clerk's Office which will be funded through the RDA support services fund. To further minimize costs in the City Clerk's Office, the City Manager is directed to replace the current Staff Specialist position with an Account Clerk II position which would better match current assignments and save an additional $25,000.

e. **Cost Control Measures:** In light of the severe financial challenges facing the City since 2001, I want to stress the importance of continuing to adhere to tight cost control measures. These actions are necessary to ensure the overall fiscal health of the General Fund as well as other funds. All City Council Appointees are directed to closely scrutinize all spending to determine if those expenditures are absolutely necessary. Cost control categories currently in place that should continue and be strengthened to the extent possible include:

- Hiring Freeze Exemptions/Position Reallocations
- Overtime Expenditures
- Consultant Expenditures
- Marketing Expenditures
- Meal Expenditures/Reimbursements
- Office and Space Renovations
- Technology Expenditures
- Travel that Requires an Overnight Stay or an Airplane Trip
- Vehicle Purchase/Replacement

4. Transportation and Environment

a. **Environmental Services Department Review:** During the Budget Study Sessions, Councilmember Chu raised concerns about staffing levels in the Environmental Services Department. The City Auditor is directed to add a staffing and management audit of ESD to her workplan for 2011-2012 with special focus on how ratepayer funds are used (i.e. Sewer, Storm Sewer, Water Utility, and Recycle Plus). Budgetary decisions in these funds have a consequence for and responsibility to the ratepayers. This audit should also include reviewing the Water Pollution Control Plant rehabilitation project for opportunities to reduce the cost of the project, expediting the project, and creating savings for rate payers. Further, the City Manager is directed to work with a Treatment Plant Advisory Committee (TPAC) subcommittee which includes technical staff of TPAC members, to extensively review the Water Pollution Control Plant rehabilitation.

5. Redevelopment Agency

The Redevelopment Agency has been impacted by actions in Sacramento, the deep local recession, and the drop in assessed values that have significantly threatened the Agency's ability to operate. With significantly reduced staffing and funding capacity, the Agency must focus time and resources on generating jobs and tax increment and meeting our existing obligations. If the State decides to terminate redevelopment agencies, the City Council will have to reconsider how this critical work gets accomplished.

a. **Redevelopment Agency Budget Principles:** These are extraordinary times for the Redevelopment Agency. To help ensure the Agency's future fiscal health, I am proposing the Agency Board adopt the following Budget Principles.

- Develop budgets in accordance with the Agency Board's approved budget priorities.

- Conduct and report to the Agency Board semi-annual reviews of the Agency's budget, debts, cash flows and impacts on prospective capital and operating budgets.
- Annually review and report to the Agency Board sources and uses of funds projections and assumptions.
- Consistent with applicable federal and state laws and guidelines, prohibit use of tax increment revenues for non-redevelopment operating expenses including building and infrastructure maintenance and non-redevelopment related costs such as staff and other costs not directly or indirectly attributed to redevelopment activities and programs.
- One-time resources should be used to pay down long-term debt, establish and/or increase Agency reserves for economic development, or fund capital related programs and projects.
- Discuss issues of concern jointly with the City on a regular basis and bring these issues to the City Council's attention as appropriate. Operating expenses should be funded through tax increment or other ongoing revenues.
- Focus Redevelopment budgets on eliminating blight through job creation, retention/attraction of jobs, and projects/programs that generate tax increment.
- Implement reserve policies including:
    - Establish and maintain an economic uncertainty reserve at a minimum of three percent of annual tax increment revenues.
    - Review reserve funds annually to determine they are at appropriate levels.
- Set a priority for long-term debt to finance redevelopment projects.
- Before issuing additional long-term debt, determine that actual and projected annual revenues are sufficient to fund the Agency's existing senior, junior and subordinate annual debt payment obligations.

b. **Redevelopment Agency Employees:** The Agency Board has already approved a policy of two weeks severance for every year of service with a maximum of 26 weeks for prior Agency employees. In the event that the Governor's proposal to eliminate Redevelopment is successful, I recommend that the Agency's employees have the same severance consideration. Also, the Executive Director is directed to implement 10% ongoing total compensation reductions for Agency employees.

c. **Center for Employment Training (CET):** CET provides thousands of San José residents with crucial job training skills ranging from culinary arts to solar panel installation. In 2008, the Executive Director of CET applied for a $3 million federal grant under the assumption of additional funding from the Redevelopment Agency. However, due to the financial difficulties of the Agency, the money was never budgeted nor submitted for Board approval. In September of last year, CET received word that they had obtained the federal grant. Without the Redevelopment Agency matching funds, CET will likely lose $3 million in federal funding that will serve needy residents and blighted neighborhoods, as well as an $800,000 commitment from Sun Microsystems. There is currently funding in the Economic Uncertainty Reserve to assist with potential impacts from JP Morgan or lower than projected assessments. The Redevelopment Agency Executive Director is directed to allocate funding to CET should adequate funds remain in this reserve once the impacts from JP Morgan and this year's assessments are known. ($950,000, BD #51)

d. **Washington Area Strong Neighborhood Improvements:** The elimination of neglected infrastructure at the Alma Senior/Youth Center will remove a source of blight that has attracted drug use and criminal activity. In addition, over 6,000 hours of volunteer time from Santa Clara University will be secured to assist residents in planning and implementing beautification/blight removal activities and programs to improve the quality of life in the neighborhood. Volunteers will aid in facilitating various activities such as neighborhood clean-ups, anti-graffiti and litter projects, energy efficiency events, and community engagement through surveys, planning workshops, and services and outreach projects. The Redevelopment Agency has funded $90,000 for this project. The City Manager is directed to appropriate this money as part of the Administration's June 21, 2011 year-end clean ups memorandum. (RDA $90,000)

c. **Calle Willow Business Improvements:** Funding for the Calle Willow Business District Banner Installation and Beautification Project will provide for the continuation of the Banner program. This project includes the relocation and installation of signs and new overhead street name signs; the installation, replacement, and repair of new banners; and the restriping of existing street markings. These improvements establish an environment that promotes community and economic development by marketing the Neighborhood Business Districts and ensuring an aesthetically pleasing environment. The Redevelopment Agency has funded $20,542 for this project. The City Manager is directed to appropriate this money as part of the Administration's June 21, 2011 year-end clean ups memorandum. (RDA $20,542)

f. **RDA Support Funding:** The RDA Budget includes $250,000 for City support services and $100,000 for rent. The City Manager is directed to accept those funds and use them to fund reinstatements included in this Message.

6. **Preparing for Fiscal Year 2012-2013**

a. **Future Deficit Reserve:** Based upon changes proposed in this Message, as part of the 2010-2011 Annual Report, the City Manager is directed to complete a final reconciliation to determine the impact on the City's annual retirement and unemployment contributions. Any additional funding should be set aside in a 2012-2013 Future Deficit Reserve in order to mitigate future impacts of the projected $78 million shortfall for 2012-2013.

b. **Suspend General Fund Ending Fund Balance Policy:** Our current General Fund Ending Fund Balance Policy provides that any excess fund balance shall be divided equally between unmet/deferred infrastructure and maintenance needs and a reserve to offset any projected deficit for the following fiscal year. Given next year's deficit is projected to be approximately $78 million, I recommend that any excess ending fund balance that may be available after the close of the 2010-2011 fiscal year be allocated entirely to the 2012-2013 Future Deficit Reserve.

c. **Strong Neighborhoods Initiative Funding:** The City has a wide range of proven tools that support and engage our communities: the Mayor's Gang Prevention Task Force, the Schools City/Collaborative, Community Development Block Grant programs, anti-graffiti programs, housing rehabilitation, rental rights, code enforcement, community policing, and the Strong Neighborhoods Initiative Program. However, this year and future years require deep cuts and fundamental change as we get back to providing basic services. There is an opportunity for SNI to become a non-profit partner of the City to deliver similar services at reduced costs. The City Manager is directed to pursue this opportunity and complete this prior to the 2012-2013 budget process.

d. **Survey:** Councilmembers have expressed interest in asking the voters about revenue-enhancement measures in addition to the proposed Fiscal Reforms. The City Manager is directed to work with the Mayor's Office to survey new revenue measures and the Fiscal Reforms. Revenue measures surveyed should focus on those that would maximize general fund revenues for the City and those with likelihood of passing based on prior surveys. The survey results should be included in the discussion regarding ballot measures and Fiscal Reforms in August.

e. **Contracting Out Opportunities:** The City Manager should review and consider additional opportunities to contract out services to prepare for next year's budget deficit. This review should consider, at a minimum, Real Estate, Park Maintenance, Accounting/Payroll, Fleet Services, and Workers Compensation.

f. **Old Fire Station #1:** The Redevelopment Agency has several asset sales planned for the upcoming Fiscal Year. Since 2000, Old Fire Station #1 has sat unused on the corner of Market and St. James Streets in Downtown San José. The Redevelopment Agency Executive Director is directed to accelerate the process for sale of this asset.

g. **Lot E:** Lot E is situated at West Mission Street and North San Pedro Street near the headquarters of the San José Police Department. The United States General Services Administration is no longer interested in the site for a new courthouse. The City Manager is directed to accelerate the process for moving forward with the sale of this asset.

h. **Rancho del Pueblo Golf Course:** The remaining debt service obligation for Rancho del Pueblo Golf Course is $7,721,328 (with annual debt service ranging between $450,000 and $460,000 annually through 2027-2028). Through a consultant, staff determined the value of the Rancho del Pueblo Golf Course property to be just under $20 million if allowed to fully develop. Staff is directed to complete outreach, accelerate this sale process, and bring the decision to City Council as soon as possible.

i. **Community Development Block Grant:** In light of the City's current fiscal challenges and the federal budget reductions related to CDBG, the City Manager is directed to review the Community Development Block Grant (CDBG) Program and evaluate how the limited CDBG funds can best be directed in accordance with federal requirements to City priorities as determined by the Mayor and the City Council as part of the City's budget process. The City Manager should report back to the City Council through the Public Safety, Finance and Strategic Support Committee to review recommendations for the Fiscal Year 2012-2013 allocation of funds.

j. **TOT Distribution:** Six Percent of the Hotel Tax is placed into a special fund for use on specified art, cultural, and convention purposes. We should ensure that this distribution is consistent with stakeholder and community priorities. The City Manager is directed to poll changing the use of these funds.

k. **Arts Grants:** I recognize that a sluggish economy and the construction of the Convention Center may adversely affect TOT revenues in the coming years. Scarcer dollars in the TOT fund will necessitate that we focus arts dollars - particularly in the operations grants pool - where they will have the largest economic impact. The City Manager is directed, in consultation with our Arts Commission and arts stakeholders, to narrow the grant pool to ensure that we can award grants that will have a significant benefit to arts organizations that have the most substantial impact on our cultural landscape, and that bring the most economic benefit to San José.

l. **Workers Compensation Reforms:** The Cost of the City's Workers' Compensation Program is higher than comparable California cities and counties. There is potentially $10-12 million in savings related to workers compensation reform. In addition, the City Council has approved achieving workers' compensation reforms as recommended by the City Auditor. The City Manager shall accelerate consideration of changes including contracting the entire process to Santa Clara County, which has a much better record then we do. The City Manager shall present a workplan and strategy, followed by monthly progress reports for implementation by September to the Public Safety, Finance and Strategic Support Committee.

m. **Prepare for Zero:** Given the extent of next year's budget deficit, organizations that receive grants and subsidies should be prepared to not receive funding in Fiscal Year 2012-2013.

7. Re-Budget Proposals

For Mayor and Council Offices, I recommend the following re-budgets subject to final verification of accounts by the City Clerk's Office. I also recommend that office re-budgets be capped at 1/3 of the Fiscal Year 2011-2012 proposed base budgets. These savings will assist funding programs identified in this Message. I am also recommending the Council General re-budget be reduced by $750,000. Council District 1 has opted to forego their entire re-budget to help fund public safety initiatives.

	Constituent Outreach Re-budget	Office Re-budget	Revised Re-budget (Capped at 1/3)	Potential Savings
Mayor's Office	n/a	$688,469	$442,494	$245,975
Council General	n/a	$1,034,965	$284,965	$750,000
District 1	$0	$23,165	$0	$23,165
District 2	$2,120	$179,757	$80,859	$98,898
District 3	$10,013	$56,232	$56,232	$0
District 4	$7,571	$149,021	$80,859	$68,162
District 5	$24,705	$110,743	$80,859	$29,884
District 6	$2,776	$180,173	$80,859	$99,314
District 7	$27,811	$90,846	$80,859	$9,987
District 8	$11,412	$18,963	$18,963	$0
District 9	$25,572	$63,249	$63,249	$0
District 10	$27,522	$131,832	$80,859	$50,973
Total Savings				$1,376,358

COORDINATION

This memorandum has been coordinated with the City Manager, City Attorney, and the Redevelopment Agency Executive Director.

CITY SOURCE AND USE OF FUNDS

GENERAL FUND

		2011-2012	Ongoing
	SOURCE OF FUNDS		
MBA 20	Solid Waste Overhead	$ 69,687	$ 69,687
MBA 30	Medical Marijuana	2,786,424	2,907,786
MBA 36	Legal Services Overhead	88,200	88,200
MBA 38	Enterprise Zone (Overhead/Departmental Charges)	19,600	19,600
MBA 43	Development Services/Working at the Speed of Business (Overhead)	9,105	9,105
7	Library Fines (included in additional day of Library Services)	300,000	300,000
12	Redevelopment Agency Support	450,000	450,000
15	Redevelopment Agency Support Services	250,000	250,000
15	Redevelopment Agency Rent	100,000	100,000
8	Lake Cunningham Revenue	36,250	
12	Mayor/Council Rebudgets	1,490,559	
12	Mayor/Council Fund Balance (Office Savings)	1,376,358	
	Total General Fund Source of Funds	**$ 6,976,183**	**$ 4,194,378**
	USE OF FUNDS		
MBA 41	Alternative Service Delivery/Parks & Custodial Services	$ (54,000)	$ (54,000)
7	Library Hours: 40.63 positions 1.0 Division Manager, 3.0 Sr Librarian, 7.0 Librarian, 1.0 Sr Supervisor Admin, 7.0 Library Assistant, 1.0 Sr Library Clerk, 11.0 Library Clerk, 5.50 Library Clerk PT, 2.93 Library Page PT, 1.0 Sr Account Clerk, 0.20 Network Tech PT	2,934,000	3,934,000
7	Healthy Neighborhoods Venture Fund	(400,000)	
7	Senior Wellness Activities: 2.0 Recreation Specialist	400,000	
7	Fire Apparatus Replacement	(550,000)	
8	Ranger Program: 2.0 Park Ranger	185,000	
8	Lake Cunningham Skate Park: 1.0 Recreation Specialist, 0.85 Recreation Leader PT, 1.0 Regional Park Aide PT Marina: 0.96 Regional Park Aide PT, 0.15 Community Services Aide, 0.40 Recreation Leader PT	117,500	
MBA 39	Graffiti Eradication	(250,000)	(250,000)
9	Regional Public Safety Communications	74,000	
10	Code Enforcement: 1.0 Code Inspector	116,000	

CITY SOURCE AND USE OF FUNDS

		2011-2012	Ongoing
10	Crossing Guards: 10.0 School Crossing Guards PT	75,000	
10	La Raza Study	50,000	
10	Safe Schools Campus Initiative: 2.0 Youth Outreach Worker II, 2.0 Youth Outreach Worker I	302,424	
10	Sign Ordinance: 1.0 Planner	129,000	
10	Chaplaincy Program	20,000	
11	Mayor's Education Programs	(136,000)	(136,000)
11	Mayor/Council Travel	(25,000)	(25,000)
11	Green Vision Rebudget	(171,000)	
11	Energy Efficiency Rebudget	(100,000)	
11	Unemployment Insurance Savings	(960,000)	
11	Convention and Visitors Bureau Marketing	(100,000)	(100,000)
11	Public Art Maintenance and Cultural Affairs Non-Personal/Equipment	(100,000)	(50,000)
11	Planning Commission Reduction	(14,000)	(14,000)
11	Elections Commission Reduction	(30,000)	(30,000)
11	Civil Service Commission Reduction	(6,000)	(6,000)
12	Retirement Reform Election	2,800,000	
12	Redevelopment Agency Support Services: 2.0 Sr Deputy City Attorney, 1.0 Legal Analyst, 1.0 Legal Administrative Assistant	750,000	450,000
12	Workers Compensation Staffing 0.50 Deputy City Attorney, 0.50 Legal Admin Asst	170,000	
12	Fiscal Reforms Funding for Outside Legal Counsel	150,000	
12	City Clerk's Office: 1.0 Analyst	133,700	133,700
12	City Clerk's Office: Add 1.0 Account Clerk II, Delete 1.0 Staff Specialist	(25,000)	(25,000)
12	Mayor/Council Office Rebudgets	1,490,559	
	Total General Fund Use of Funds	**$ 6,976,183**	**$ 3,827,700**
	2012-2013 Additional Funding	**0**	**366,678**

CITY SOURCE AND USE OF FUNDS

LIBRARY PARCEL TAX FUND

		2011-2012	Ongoing
	SOURCE OF FUNDS		
7	No Change	$ 0	
	Total Library Parcel Tax Fund Source of Funds	$ 0	$ 0
	USE OF FUNDS		
7	Library Services (personal services)	$ 1,000,000	
7	Ending Fund Balance	(1,000,000)	
	Total Library Parcel Tax Fund Use of Funds	$ 0	$ 0

COMMUNITY DEVELOPMENT BLOCK GRANT FUND

		2011-2012	Ongoing
	SOURCE OF FUNDS		
7	No Change	$ 0	
	Total Community Development Block Fund Source of Funds	$ 0	$ 0
	USE OF FUNDS		
7	Fire Apparatus Replacement	$ 550,000	
7	Ending Fund Balance	(550,000)	
	Total Community Development Block Fund Grant Fund Use of Funds	$ 0	$ 0

GENERAL PURPOSE PARKING FUND

		2011-2012	Ongoing
	SOURCE OF FUNDS		
8	No Change	$ 0	
	Total General Purpose Parking Fund Source of Funds	$ 0	$ 0
	USE OF FUNDS		
8	Downtown Holiday Events	$ 25,000	
8	Ending Fund Balance	(25,000)	
	Total General Purpose Parking Fund Use of Funds	$ 0	$ 0

CITY SOURCE AND USE OF FUNDS

INTEGRATED WASTE MANAGEMENT FUND

		2011-2012	Ongoing
	SOURCE OF FUNDS		
8	No Change	$ 0	
	Total Integrated Waste Management Fund Source of Funds	$ 0	$ 0
	USE OF FUNDS		
8	Downtown Holiday Events	$ 75,000	
8	Ending Fund Balance	(75,000)	
	Total Integrated Waste Management Fund Use of Funds	$ 0	$ 0

TRANSIENT OCCUPANCY TAX FUND

		2011-2012	Ongoing
	SOURCE OF FUNDS		
11	Beginning Fund Balance	$ 50,000	
	Total Transient Occupancy Tax Fund Source of Funds	$ 50,000	$ 0
	USE OF FUNDS		
11	Public Art Maintenance and Cultural Affairs Non-Personal/Equipment	50,000	
	Total Transient Occupancy Tax Fund Use of Funds	$ 50,000	$ 0

SERVICES FOR REDEVELOPMENT CAPITAL PROJECTS FUND

		2011-2012	Ongoing
	SOURCE OF FUNDS		
15	Beginning Fund Balance	$ 110,542	
	Total Services for Redevelopment Capital Projects Fund Source of Funds	$ 110,542	$ 0
	USE OF FUNDS		
15	Washington Area Strong Neighborhood Improvements	$ 90,000	
15	Calle Willow Business Improvements	20,542	
	Total Services for Redevelopment Capital Projects Fund Use of Funds	$ 110,542	$ 0

CITY SOURCE AND USE OF FUNDS

UNEMPLOYMENT INSURANCE FUND

	2011-2012	Ongoing
SOURCE OF FUNDS		
Earned Revenue	$ (960,000)	
Total Unemployment Insurance Fund Source of Funds	**$ (960,000)**	**$ 0**
USE OF FUNDS		
Payment of Claims	(960,000)	
Total Unemployment Insurance Fund Use of Funds	**$ (960,000)**	**$ 0**

EXHIBIT 4

Side Letter Agreement

BETWEEN

THE CITY OF SAN JOSE

and

SAN JOSE POLICE OFFICERS' ASSOCIATION

RETIREMENT REFORM

The City and the San Jose Police Officers' Association agree to continue meeting and conferring on pension and retiree healthcare benefits for current and future employees, including but not limited to healthcare benefits. The negotiations may include modification of healthcare (medical and dental) plans available to current employees, including but not limited to plan design.

Either the City or Union may provide notice to the other of its request to meet and confer. Upon such notice, the parties shall continue these negotiations within ten (10) calendar days after the City or Union receives notice from the other. The City and Union shall meet and confer in good faith in an effort to reach a mutual agreement. If the parties are at impasse and no agreement is reached, the parties shall submit the issues for determination in accordance with the applicable provisions under the Employer-Employee Relations Resolution No. 39367 and/or City Charter Section 1111.

Opt In Program

As part of the negotiations related to retirement reform, the parties will meet and confer regarding an opt in program in which current employees could voluntarily choose to opt out of the current level of pension benefits into a lower level of benefits.

In the event that the City and the POA do not reach an agreement on the specific design of an opt in program by November 1, 2011, at the POA's option the City will implement the opt in program that was proposed by the POA during contract negotiations (2.5% for the first 20 years and 3% after 20 years with an 80% maximum, 2% fixed COLA and 3 year final average salary) effective December 25, 2011, under the following conditions:

1. 40% of the employees represented by the POA sign an irrevocable waiver to elect to go into the opt in program described above. Employees would be required to sign a document indicating that they understand that if the

program is implemented, this is an irrevocable election and that they will not be able to opt back into the former tier of benefits.

AND

2. Any implementation of an opt-in program is contingent upon receiving an IRS qualification letter.

Even if 40% of the employees represented by the POA sign an irrevocable waiver to opt in and IRS approval has been received, the POA will have the option not to proceed with implementation of the opt in program. If less than 40% of the employees represented by the POA sign an irrevocable waiver to opt in and IRS approval has been received, the opt in program may still be implemented by mutual agreement of both the City and the POA.

The parties agree that the dates contained herein regarding the opt in program can be modified by mutual agreement of the parties.

The POA expressly acknowledges that this opt in program is not the solution to the costs of the City's retirement benefits and the unfunded liabilities for both pensions and retiree healthcare. The City has informed the POA that even if the opt in program is implemented, further changes will be required to significantly reduce the costs of pension and retiree healthcare benefits and the unfunded liabilities, which may include a substantially lower cost tier for new employees and reduced benefits and/or increased employee contributions for current employees, including those who may elect the opt in program. Neither party waives any legal rights including the Union's nor any member's right to assert that certain benefits are vested.

This Agreement is tentative and shall become effective only as part of the overall agreement on, and only during the term of, a successor Memorandum of Agreement.

FOR THE CITY:	FOR THE UNION:
6-3-11	6/3/2011
Alex Gurza — Date	George Beattie — Date
Director of Employee Relations	President, San Jose Police Officers' Association

EXHIBIT 5

PLEDGE OF COOPERATION AND AGREEMENT UPON A FRAMEWORK FOR RETIREMENT REFORM AND RELATED BALLOT MEASURE NEGOTIATIONS

CITY OF SAN JOSE

&

SAN JOSE POLICE OFFICERS' ASSOCIATION
SAN JOSE FIRE FIGHTERS, IAFF, LOCAL 230

1. The parties are fully committed to negotiating in good faith to reduce the costs of the Police and Fire Department Retirement Plan and to preserve critical City services and the employees who deliver those services.

2. The parties agree to negotiate concurrently on the issues of retirement reform and related ballot measure(s). Negotiation of retirement reform shall include pension and retiree healthcare benefits for current and future employees, including but not limited to: healthcare benefits; the Supplemental Retiree Benefit Reserve (SRBR); an opt-in program in which current employees could voluntarily choose to opt-out of the current level of pension benefits into a lower level of benefits; and other items as identified through the negotiations.

3. Although the negotiation sessions on retirement reform and related ballot measure(s) will not be public, all written proposals and correspondences exchanged will be made available to the public on the City's website.

4. Any party's relevant subject matter experts may attend negotiation sessions. By mutual agreement of the City and the Unions, other individuals may attend negotiation sessions.

5. It is understood that the parties shall each engage an actuary and work together to develop cost estimates. It is understood that the final costs of any changes shall be determined by the Police and Fire Department Retirement Board's actuary.

6. Estimated cost savings for any proposals during the negotiations shall be supported by facts and data.

7. The parties agree to meet and confer in good faith and agree to complete the negotiation process by October 31, 2011. If the parties are unable to reach an agreement on retirement reform and/or related ballot measure(s) by October 31, 2011, the parties shall proceed to impasse, pursuant to the procedures outlined in the Employer-Employee Relations Resolution No. 39367. In the event of impasse, the POA and IAFF, Local 230 will participate in the impasse procedures collectively. If the parties proceed to binding interest arbitration, in accordance with the applicable provisions under Charter Section 1111, it is understood that the POA and Local 230 will participate in these proceedings separately. Charter Section 1111 shall not apply to bargaining over ballot measures.

8. The parties agree that the Council may, pursuant to its constitutional authority, place charter amendments on the ballot regarding retirement at the conclusion of these

negotiations and mediation.

9. It is understood that, by participating in these negotiations, neither party waives any legal rights, including the Unions' or an employee's rights to assert that certain benefits are vested.

FOR THE CITY

6-20-11
Alex Gurza
Director of Employee Relations

06/20/11
Gina Donnelly
Deputy Director of Employee Relations

FOR THE UNIONS

6/20/2011
George Beattie, President
San Jose Police Officers' Association

6/20/11
Robert Sapien, President
San Jose Fire Fighters, IAFF, Local 230

EXHIBIT 6

DRAFT- July 5, 2011

PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS WHILE PRESERVING ESSENTIAL CITY SERVICES

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: *"The Employee Fair Pay Act for Fiscal Sustainability."*

Section 1: FINDINGS

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community center (hereafter "Essential City Services").

The City and its citizens are threatened by climbing costs of employee benefit costs imposed by its current pension and other post employment benefit programs. The employer cost of the City's retirement plans is expected to increase dramatically in the near future. In addition, the City's accrued unfunded liability for other post employment benefits – primarily health benefits –

is similarly increasing. To adequately fund these costs, the City would be required to cut other services annually.

These costs have created a public service emergency, because they jeopardize the City's ability to provide Essential City Services. In the last year, the City eliminated numerous police officers and firefighter positions. Because the cost of these benefits is rising so rapidly, and because of current economic conditions and legal restrictions that limit revenue growth, these costs are expected to lead to a critical reduction in police and fire services as compared to June 2010. By any measure, such levels are unsustainable, and endanger the residents of San Jose.

These future liabilities associated with the City's adoption and enhancements of its post employment programs were not adequately analyzed or understood at the time the benefits were adopted or enhanced. Although the City exercised due diligence at the time, it was impossible to anticipate the staggering declines in the funded status of the retirement fund or the alarming rate of increase in post-employment health care costs.

Without the reasonable cost containment as provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its citizens always intended that its pension and post employment plans be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its citizens.

By this Act, the voters find and declare that pension and other post-employment benefits must be adjusted in a manner that protects the City's economic stability, at the same time it allows for the continuation of fair post-employment benefits for its workers.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of adoption of the City's post employment benefit programs.

The voters hereby find that the facts and circumstances constitute an emergency within the meaning of the Meyers-Milias-Brown Act ("MMBA"), Government Code section 3504.5.

Section 2: INTENT

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly in order to preserve the health, welfare and benefit of its citizens.

This Act is not intended to deprive any current or former employees of benefits earned for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the current pension amounts received by any retiree, including any cost of living increases received by retirees to date.

This Act is not intended to grant any vested rights to any post employment benefit, as the City retains its power to amend, change or terminate any retirement or other post employment benefit program provided by the City.

This Act is intended to ensure the City can provide sustainable post employment benefits while at the same time delivering essential services to the citizens of San Jose.

This Act is intended to express the City's management priorities with respect to employee compensation.

Section 3. Reservation of Voter Authority

The voters expressly reserve the right to consider any change in matters related to pension and other post-employment benefits to the extent they exceed the maximums set forth in this measure. The City Council shall have no authority to agree to any matters pertaining to pensions or other post-employment benefits exceeding the maximums set forth in this measure.

Section 4. Reservation of Rights to City Council

Subject to the limitations set forth in this Act, the City Council retains its authority to amend, change or repeal any retirement or other post employment benefit program under the Charter.

Section 5. Voluntary Election Program

The City Manager shall propose, and the City Council shall adopt by ordinance, a Voluntary Election Program ("VEP") that permits current City employees the option to join a new and less costly retirement program.

The VEP benefits will be less costly, and may contain the following features: (a) a slower accrual rate; (b) an increase in the eligibility age; and (c) an increase in the years of service requirement for medical benefits.

Employees' share of the costs to amortize any unfunded liabilities greater than those existing on June 30, 2010, shall be 50%, unless they have opted into the VEP.

DRAFT- July 5, 2011

Section 6: Future Employees – Limitation on Retirement Benefits – Tier 2

To the extent not already enacted, the City Manager shall propose, and the City Council shall adopt by ordinance, to be effective not later than June 30, 2012, a retirement program for employees hired on or after the effective date of such ordinance. This retirement program – for new employees – may be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

(a) The maximum City contributions shall not be less than 6.2% nor greater than 9% of base salary. In no event shall the City contribution to such plan exceed 50% of the cost of the Tier 2 plan. The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan or a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U), capped at 1% per fiscal year.

(d) For any defined benefit plan, the measuring period for determining "final compensation" shall be the average salary of the three consecutive years preceding the date of retirement.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 1.5% per year of service.

(f) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan shall create a vested right to any benefit.

[DISABILITY RETIREMENT – LANGUAGE TO COME]

Section 7: Current Employees – Reasonable Modifications to Existing Plans – Modified Tier 1

The City Manager shall propose, and the City Council shall adopt by ordinance to be effective not later than June 30, 2012, a modified retirement program for all employees eligible to be members of the existing retirement plans of the City as of the effective date of this Act.

The modified programs may be referred to as "Modified Tier 1" and shall have the following limitations:

(a) The plan shall not deprive any current or former employees of benefits earned and accrued for prior service as of the modified plan's effective date; thus, benefits earned and accrued by individual employees for prior service shall be preserved for payment at the time of retirement.

(b) On and after the effective date of the ordinance, pension benefits shall prospectively accrue based on the following limitations:

(i) benefits shall accrue at a maximum rate of 1.5% per year of service.

(ii) the age of eligibility for service retirement for existing employees shall increase by six months annually on July 1 until the retirement age reaches the age of 60 for police officers and firefighters and 65 for all other employees. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement.

(iii) cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U), capped at 1% per fiscal year.

(iv) The measuring period for determining "final compensation" shall be the average salary of the three consecutive years preceding the date of retirement.

Section 8: Reasonable Cost of Living Adjustments for Current Retirees

1. The City Manager shall propose, and the City Council shall adopt by ordinance, a program of benefits applicable to all current retirees as follows:

   ~~(a) Cost of living adjustments ("COLAs") shall~~ be adjusted for all retirees, such that the COLAs are limited to the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U), capped at 1% per fiscal year.

2. Any supplemental payments shall not be funded from plan assets.

Section 9: Retiree Health Care Insurance Plans

The City Manager shall propose, and the City Council shall adopt by ordinance, to be effective not later than June 30, 2012, a modified retiree health care program (including medical and dental) with the following limitations:

(a) **Current Employees:** The years of service required to qualify for retiree health care benefits shall increase by six months annually on July 1, until it reaches 20 years, except for employees who receive such health insurance based on a service disability retirement.

(b) **New Employees:** The years of service required to qualify for retiree health care benefits shall be 20 years, except for employees who receive such health insurance based on a service disability retirement.

(c) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare.

(d) **Reservation of Rights.** No retiree health care plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

Section 10: Actuarial Soundness

(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent audit using standards set by the Government Accounting Standards Board. The

City Manager shall certify that any plans adopted pursuant to the Act: (i) are actuarially sound; (ii) minimize any risk to the City and its citizens; and (iii) are prudent and reasonable in light of the economic climate.

(b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board.

Section 11: Safety Net Provisions

(a) Preservation of Essential City Services:

At any time that: (1) Essential City Services are not provided at or above the service levels of January 1, 2011; (2) any library, community center, fire station, or police station or substation built or under construction as of January 1, 2011 are not operational; or (3) any of the City's pension plans have unfunded liabilities greater than those liabilities existing as of June 30, 2010, then the Mayor, the City Council, the City Manager and other officers of the City, or any arbitrator or board of arbitrators, shall be prohibited from making or approving any contract, memorandum, agreement, award, grant, decision, resolution, ordinance or other official act that allows or requires the City to do any of the following, without prior approval by the voters: (i) pay for unused sick leave or unused vacation time, except as required by applicable state or federal law; (ii) increase compensation for members of bargaining units after contracts expire; (iii) give automatic step increases or other raises for time in the job that are not based on performance; (iv) use hours not worked in determining eligibility for overtime or for retirement benefits; (v) pay overtime to executive, professional, or administrative employees or to other employees who are exempt from overtime requirements under the Fair Labor Standards Act ("FLSA"), or who are otherwise exempt from the FLSA; (vi) pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to eliminate duplication of benefits for the same cause of disability; (vii) pay workers' compensation benefits beyond what state or federal laws require; (viii) allow existing or former employees to grant workers' compensation or disability benefits for existing or former employees; (ix) calculate retirement benefits on any compensation other than actual base salary paid or years (2080 hours) actually worked for the City of San Jose, except as required by applicable state law; (x) make layoff or rehiring decisions without considering individual employee performance; (xi) pay for more than 50% of the increase in the cost of healthcare benefits.

(b) Unfunded Liabilities in Pension and Other Post Employment Benefit Programs

The City Manager shall propose, and the City Council shall adopt by ordinance, safety net provisions with the following minimum features:

(1) At any time City pension or retiree health care plans have unfunded liabilities for pension or retiree healthcare greater than those liabilities existing as of June 30, 2010, the following limitations shall be in effect for existing employees who have not opted into the benefits program for new employees, except upon approval by the voters:

(i) Retirement benefits shall not continue to accrue beyond the minimum benefits specified in the Charter, Article XV.

(ii) Calculation of benefit payments shall be based on a three year average as specified in the Charter, Article XV.

(iii) The age of eligibility for payment of service retirement benefits shall not be less than the retirement age specified in the Charter, Article XV.

(iv) Benefits shall not be increased after retirement.

(v) Employees' share of the costs to amortize any unfunded liabilities greater than those existing on June 30, 2010, shall be 50%, unless they have opted into the benefits program for new employees.

(2) At any time City pension or retiree healthcare plans have unfunded liabilities for pension or retiree healthcare greater than those existing on June 30, 2010, bonuses, increases, or supplemental pension payments to retirees shall

not be allowed, except upon prior approval of the voters.

(3) The provisions shall be temporary and shall remain in effect until the unfunded liabilities have remained below the level of June 30, 2010 for three consecutive years.

Section 12: Savings and Severability

(a) This Act shall be harmonized and interpreted to be consistent with all federal and state laws, rules and regulations. If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective. This Act shall be broadly construed to achieve its stated purposes.

(b) In the event any section of this Act is determined to be illegal, invalid or unenforceable as to retirees, then all benefit enhancements or increases (including pension and other post employment benefits of any kind) granted to retirees since the date of their retirement shall be eliminated.

(c) In the event any section of this Act is determined to be illegal, invalid or unenforceable as to existing employees, then the existing employees' share of the costs to amortize any unfunded liabilities shall be 50% unless the employees have opted into the VEP benefit levels.

(d) The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act.

EXHIBIT 7

San Jose Police Officers and Fire Fighters

LOCAL 230

1151 No. Fourth St.
San Jose, CA 95112
Phone #(408) 298-1133

425 E. Santa Clara St.
Suite 300
San Jose, CA 95113
Phone #(408) 286-8718

SAN JOSE POLICE OFFICERS ASSOCIATION AND SAN JOSE FIREFIGHTERS, IAFF LOCAL 230 RETIREMENT REFORM PROPOSAL

TIER III: RETIREMENT BENEFITS FOR NEW EMPLOYEES

I. Pension Formula 2.0% @ 50 for Local Safety Members CALPERS Section 21362

The pension benefit for eligible employees hired on or after July 1, 2012, shall be administered by CalPERS and be entered into their Section 21362 2% @ 50 Full Formula. This formula provides to local safety members 2% of pay at age 50 for each year of service credited with that employer. The percent per year of service gradually increases for each age attained from 2% at age 50 to 2.7% at age 55+. Local safety members subject to the 2% @ 50 Full Formula contribute 9% of reportable earnings.

Local safety members who retire after the effective date of the contract amendment will be subject to this formula. The total allowance for service retirement under the 2% @ 50 formula cannot exceed 90% of final compensation.

II. Annual Cost of Living Allowance Increase - COLA Section 21335

Allowances for retired members are currently covered by an annual 2.0% maximum cost- of-living increase provided the Consumer Price Index (CPI) factor increases at least 2.0%.

For example: COLA for retired members shall be based on an annual Consumer Price Index (CPI) factor with a 2.0% maximum cost-of-living increase, whichever is lower.

III. Final Average Salary

The period for determining the average monthly pay rate when calculating retirement benefits will be from the highest paid consecutive 36 months.

IV. Post Retirement Survivor Allowance: Sections 21624, 21626, 21628

Upon the death of a member after retirement, an allowance shall be continued to the surviving spouse or domestic partner. A "surviving spouse or domestic partner" means for service retirements subject to this section, a husband or wife who was married to or a domestic partner who was registered as a domestic partner with the member at least one year prior to the member's retirement and continuously to the date of the retired member's death and for disability retirements subject to this section, a husband or wife who was married to or a domestic partner who was registered as a domestic partner with the member on the date of his or her retirement and continuously to the date of his or her death.

If there is no surviving spouse or domestic partner, or if the spouse or domestic partner later dies, the allowance shall be continued to the eligible unmarried children collectively until all have reached age 18. Eligible children include disabled children over age 18 if the disability begins prior to age 18. If there is no surviving spouse or domestic partner or eligible child or children, the benefit would be paid to the surviving parent or parents of the deceased member who were dependent upon the member for support. If, at effective date of retirement, the member has no surviving spouse, domestic partner, eligible children, or dependent parents and elected an optional settlement, no allowance under this section shall be paid.

The allowance payable to the survivor(s) of a member who retires after the employer includes Sections 21624, 21626 and 21628 in its contract is determined as follows:

a. One-quarter of the retired member's unmodified allowance based on service subject to the modification for Social Security; or
b. One-half of the retired member's unmodified allowance based on service not subject to the modification for Social Security.

In accordance with Section 21628, the allowance payable to a retired member who chose Option 2, 3, or 4, or the beneficiary of such retirees shall be increased by 15%. For retirees who chose the Unmodified Allowance or Option 1, there is no increase in the retirement allowance but their eligible survivor(s) would receive the post-retirement survivor allowance upon the retired member's death.

Sections 21624, 21626 and 21628, all together, are applicable, by amendment, to contracting agencies. Sections 21624 and 21626 only are available to new contracting public agencies.

V. Improved Nonindustrial Disability Allowance for Local Safety Members Section 21427

The disability retirement allowance of a local miscellaneous and local safety member would be raised to 30% of final compensation for the first five years of service credit, plus 1% for each additional year of service to a maximum of 50% of final compensation.

If the member is under age 60, the disability retirement allowance cannot be more than the service retirement allowance would be if the member were to continue in employment and retire at age 60. If the regular disability retirement allowance is greater than the improved disability allowance, CalPERS will pay the greater amount. This section shall apply only to members who retire for disability on and after the date the agency elects to be subject to this section.

VI. Improved Industrial Disability Allowance for Local Safety Members Section 21430

If the Workers' Compensation Appeals Board permanent disability rating percentage is greater than 50%, the same percentage (up to a maximum of 90%) will be used as the percentage of final compensation to calculate the CalPERS industrial disability retirement allowance. This section shall apply only to members who retire for disability on and after the date the agency elects to be subject to this section.

VII. Credit Unused Sick Leave to Service Credit Section 20965

Unused accumulated sick leave at time of retirement may be converted to additional service credit at the rate of 0.004 year of service credit for each day of unused sick leave (i.e., 250 days of sick leave equals one additional year of service credit).

The City of San Jose will report only those days of unused sick leave that were accrued by the member during the normal course of employment. Additional days of unused sick leave reported for the purpose of increasing the member's retirement benefit are prohibited. This benefit will not increase the maximum percentage allowable.

VIII. Employees Sharing Cost of Additional Benefits Section 20516

San Jose Police Officers and San Jose Firefighters eligible for this benefit shall contribute an additional 1.0% toward retirement contribution to lower the cost of the City's pension payments. This additional 1.0% shall be credited to each members normal cost, for a maximum of 10.0% employee contribution towards pension normal cost.

This benefit allows a contracting agency or an agency that initially contracts with CalPERS to share the cost of additional retirement benefits with the employees as a result of a written agreement with the employee group.

No additional valuation is required if one has already been done for the additional retirement benefits whose cost is to be shared. The employer's rate will simply be reduced by the agreed upon percentage cost sharing.

There are two methods of requesting an actuarial study:

1. If the agreement with the employees specifies a definite percentage increase in the employee rate, such as 1.0%, 2.0%, etc., the valuation can be done on that basis.
2. If the agreement with the employee group is indefinite, the agency may wish to request several valuations, with the employees paying 0.5%, 1.0%, 1.5%, etc.

There are several points to be emphasized:

1. This provision requires that the employer and the employees agree in writing to share the cost of the applicable benefits.
2. The increase in the member contribution rate will be effective as of the effective date of the amendment to the contract. To reduce the percentage the employees have agreed to cost share at a later date, the agency will need to request an amendment to the contract.
3. The increased member contributions will be credited to each member's account as normal contributions and will be included in the refund of accumulated contributions to members who separate from CalPERS covered employment and elect to withdraw their contributions.
4. Some of the optional benefits available, such as 1959 Survivor Benefits

and Post- Retirement Survivor Allowance, may not be applicable to all employees. However, if the agency includes such benefits in conjunction with Section 20516, the contribution rate would increase for all employees in the applicable member group.

5. It is also possible to share the cost of formulas other than the minimum formulas, which are the 2% @ 60 for local miscellaneous and the 2% @ 55 for local safety members.

~~Section 20516 also permits an employer to make an independent agreement with its employees to share the cost of any optional benefit without requiring an amendment to~~ the contract. Any such agreement in a memorandum of understanding, which is inconsistent with this section, shall not be a part of the contract between the agency and this system.

IX. Military Service Credit 21024

(a) "Public service" with respect to a local member, other than a school member, also means active service with the Armed Forces or the Merchant Marine of the United States, including time during any period of rehabilitation afforded by the United States government other than a period of rehabilitation for purely educational purposes, and for six months thereafter prior to the member's first employment by the employer under this section in which he or she was a member.
(b) Any member electing to receive credit for that public service shall make the contributions as specified in Sections 21050 and 21052. However, any eligible member who requests costing of service credit between January 1, 2001, and December 31, 2003, may, instead of making those contributions, make the payment calculated under this article as it read on December 31, 2000, which payment shall be made in the manner described in Section 21050.
(c) The public service under this section shall not include military service (1) in any period for which credit is otherwise given under this article or Article 4 (commencing with Section 20990) or (2) to the extent that total credit under this section would exceed four years.
(d) Notwithstanding Section 21034, a member may select which of two or more periods of service entitles him or her to receive public service under this section.
(e) This section shall apply to a member only if he or she elects to receive credit while he or she is in state service in the employment of one employer on or after the date of the employer's election to be subject to this section.
(f) This section shall not apply to any contracting agency nor to the employees of any contracting agency until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or in the case of contracts made after this section takes effect, by express provision in the contract making the contracting agency subject to this section. The amendments to this section made during the second year of the 1999–2000 Regular Session shall apply to contracts subject to this section on January 1, 2001.

X. Fourth Level of 1959 Survivor Benefits Section 21574

This benefit provides a higher level of 1959 Survivor Benefits to survivors of a member who dies prior to retirement. The benefit is paid in addition to the Basic Death Benefit, the 1957 Survivor Benefit, or, if applicable, the Pre-Retirement Optional Settlement 2 Death Benefit but would be reduced by the amount of the Special Death Benefit, if payable. Concurrent coverage under this section and Social Security is prohibited, but an agency may provide the benefit for the full formula members of a divided miscellaneous member group. For agencies first contracting for the 1959 Survivor Program, members in employment prior to the effective date of the amendment may elect not to be covered, however, participation is required for all future hires who are not covered under Social Security (Section 21577).

A spouse or domestic partner is eligible if he or she (1) has care of eligible children, or (2) is age 60 or older. Children are eligible if under age 22 and unmarried or disabled regardless of age.

The monthly allowance payable to eligible survivors under this section is as follows:

Spouse or domestic partner with two or more eligible children;
or three or more eligible children only $2,280

Spouse or domestic partner with one eligible child; or two eligible children only ... $1,900
One eligible child only; or surviving spouse or domestic partner at age 60 or older;

or dependent parents $950

The normal cost for public agencies contracting or amending to provide the Fourth Level will be calculated based on the term insurance funding method. This rate will be calculated on the pool experience rather than individual employer experience. The actual employer cost for agencies currently providing 1959 Survivor Benefits who amend to provide the Fourth Level will vary depending upon each agency's 1959 Survivor funding level.

If there is a deficit in the agency's 1959 Survivor funding (an unfunded accrued liability) based on the Fourth Level benefit, this unfunded liability and the five years of employer normal costs shall be amortized and paid for over a period of five years, the first payment billed in June and due in July following the effective date of the amendment and the remaining four payments due by July 15, of each following year. If there is a surplus in the agency's 1959 Survivor funding, the surplus shall be amortized and used to offset the five years of employer normal costs.

At the end of the first five years, employers in the Fourth Level pool will pay only the pool's net premium.

An operative date for this benefit is established at the time of amendment.

XII. Alternate Death Benefit for Local Fire Members Credited with 20 or More Years of Service Section 21547.7

The surviving spouse, domestic partner or eligible children of a deceased firefighter member, who is credited with 20 or more years of CalPERS covered service and whose death occurs while in the employ of a local agency contracting for this benefit, may elect to receive the Alternate Death Benefit in lieu of the lump sum Basic Death Benefit or the 1957 Survivor Benefit. If the member had not attained minimum retirement age at the time of death, the Alternate Death Benefit is calculated based on the member's total service credit with all employers (including the service credit earned while in the employ of the agency contracting for this benefit) as though the member had retired at age 50 and elected Option 2W. Option 2W provides the highest monthly allowance to a beneficiary.

If the member had attained minimum retirement age at the time of death, the benefit is calculated as though the member retired on the date of death (from the employing agency and all previous CalPERS covered employers) and elected Option 2W. If the deceased firefighter had not attained the minimum retirement age at death and had service credit with previous CalPERS agencies, the cost of the Alternate Death Benefit will be the liability of the employing agency, except for a partial offset of costs resulting from a transfer of the member's contributions from all previous employers to the employing agency. The increase in liability not offset by this transfer will be paid by the agency contracting for this benefit and employing the member on the date of his/her death. If the deceased firefighter had attained minimum retirement age at death, the increased cost of the benefit (regardless of whether the member has service credit with another CalPERS employer) is the liability of the agency contracting for this benefit and employing the member on the date of his/her death.

XIII. Supplemental Retiree Benefit Reserve

The Supplemental Retiree Benefit Reserve (SRBR) will be closed to all participatory members in the TIER III retirement plan.

XIV. Retiree Health Care

An eligible full time employee who is hired on or after July 1, 2012, shall be eligible to receive 50% of the contribution towards the lowest cost premium for a non-deductible medical insurance plan, single coverage. Provided if the employee meets the following criteria:

1. Has completed at least twenty (20) years of retirement service credit in the CalPERS retirement plan.

X. Disability Retirees Health Care

An eligible full time employee who is hired on or after July 1, 2012, and is granted a service connected disability retirement shall be eligible to recieve 50% of the contribution towards the lowest cost single non - deductible medical insurance plan regardless of years of service.

XI. Non-Duplication of Benefits

A retiree may not be simultaneously covered by City sponsored plan-provided medical benefits as a retiree, and as a dependent of another City retiree or City employee.

XII. Retiree Dental Insurance

An eligible full time employee who is hired on or after July 1, 2012, shall be eligible to recieve 50% of the contribution towards the lowest cost single non - deductible dental insurance plan. Provided if the employee meets the following criteria:

1. Has completed at least twenty (20) years of retirement service credit in the CalPERS retirement plan.

An eligible full time employee who is hired on or after July 1, 2012, and is granted a service connected disability retirement shall be eligible to recieve 50% of the contribution towards a single non deductible dental insurance plan regardless of years of service.

XIII. Surviving Dependants - Employee killed in the line of duty

Surviving dependents of an employee killed in the line of duty, shall be eligible to receive 50% of the contribution towards the lowest cost single non - deductible medical and dental insurance plan.

XIV. Retiree Health Care Pre-Funding

The City and the Union agree to continue to pre-fund the fire and police retiree medical and dental healthcare benefits as described in both of the current the SJPOA and IAFF Local 230 memorandum of agreements.

TIER II: VOLUNTARY RETIREMENT BENEFITS ELECTION FOR CURRENT EMPLOYEES

On or before March 1, 2012 active employees shall make a voluntary irrevocable decision to have CalPERS administer their pension benefits beginning July 1, 2012. Any employee hired between March 1, 2012 and June 30, 2012 shall have TIER II pension benefits.

I. Pension Formula 3.0% @ 55 For Local Safety Members Section 21363.1

This formula provides to local safety members 3% of pay at age 55 for each year of service credited with that employer. For members who retire earlier, the percentage of pay is reduced to 2.400% at age 50, which gradually increases for each attained age to 3% at age 55+. Local safety members subject to the 3% @ 55 Full or Supplemental formulas contribute 9% of reportable earnings. Those covered under the 3% @ 55 Modified formula (coordinated with Social Security) contribute 9% of reportable earnings in excess of $133.33. (A formula change affecting the members' contribution rate requires an election of the affected members.)

Local safety members who retire after the effective date of the contract amendment will be subject to this formula. The total allowance for service retirement under the 3% @ 55 formula cannot exceed 90% of final compensation.

II. Cost of Living Allowance - COLA Section 21335

Allowances for retired members of the TIER II retirement plan shall be an annual 3.0% maximum cost-of-living increase provided the Consumer Price Index (CPI) factor increases at least 3.0%.

III. Final Average Salary

The period for determining the average monthly pay rate when calculating retirement benefits will be from the highest paid consecutive 36 months.

IV. Post Retirement Survivor Allowance: Sections 21624, 21626, 21628

Upon the death of a member after retirement, an allowance shall be continued to the surviving spouse or domestic partner. A "surviving spouse or domestic partner" means for service retirements subject to this section, a husband or wife who was married to or a domestic partner who was registered as a domestic partner with the member at least one year prior to the member's retirement and continuously to the date of the retired member's death and for disability retirements subject to this section, a husband or wife who was married to or a domestic partner who was registered as a domestic partner with the member on the date of his or her retirement and continuously to the date of his or her death.

If there is no surviving spouse or domestic partner, or if the spouse or domestic partner later dies, the allowance shall be continued to the eligible unmarried children collectively until all have reached age 18. Eligible children include disabled children over age 18 if the disability begins prior to age 18. If there is no surviving spouse or domestic partner or eligible child or children, the benefit would be paid to the surviving parent or parents of the deceased member who were dependent upon the member for support. If, at effective date of retirement, the member has no surviving spouse, domestic partner, eligible children, or dependent parents and elected an optional settlement, no allowance under this section shall be paid.

The allowance payable to the survivor(s) of a member who retires after the employer includes Sections 21624, 21626 and 21628 in its contract is determined as follows:

a. One-quarter of the retired member's unmodified allowance based on service subject to the modification for Social Security; or
b. One-half of the retired member's unmodified allowance based on service not subject to the modification for Social Security.

In accordance with Section 21628, the allowance payable to a retired member who chose Option 2, 3, or 4, or the beneficiary of such retirees shall be increased by 15%. For retirees who chose the Unmodified Allowance or Option 1, there is no increase in the retirement allowance but their eligible survivor(s) would receive the post-retirement survivor allowance upon the retired member's death.

Sections 21624, 21626 and 21628, all together, are applicable, by amendment, to contracting agencies. Sections 21624 and 21626 only are available to new contracting public agencies.

V. Improved Nonindustrial Disability Allowance for Local Safety Members Section 21427

The disability retirement allowance of a local miscellaneous and local safety member would be raised to 30% of final compensation for the first five years of service credit, plus 1% for each additional year of service to a maximum of 50% of final compensation.

If the member is under age 60, the disability retirement allowance cannot be more than the service retirement allowance would be if the member were to continue in employment and retire at age 60. If the regular disability retirement allowance is greater than the improved disability allowance, CalPERS will pay the greater amount. This section shall apply only to members who retire for disability on and after the date the agency elects to be subject to this section.

VI. Improved Industrial Disability Allowance for Local Safety Members Section 21430

If the Workers' Compensation Appeals Board permanent disability rating percentage is greater than 50%, the same percentage (up to a maximum of 90%) will be used as the percentage of final compensation to calculate the CalPERS industrial disability retirement allowance. This section shall apply only to members who retire for disability on and after the date the agency elects to be subject to this section.

VII. Eliminate Sick Leave Payoff

Provisions for sick leave payoff shall be eliminated in SJPOA and IAFF Local 230 Memorandums of Agreements.

VIII. Credit Unused Sick Leave to Service Credit Section 20965

In exchange for eliminating Sick Leave Payoff the following Credit for Unused Sick Leave Service Credit Provisions shall apply for up to 1 year of all unused sick leave hours. Either (two-thousand eighty) 2,080 hours for 40 hour per week employee or 2,912 (two-thousand nine hundred twelve) hours for 56 hour per week employee. Sick leave hours may be accrued beyond 1 year of service time either (two-thousand eighty) 2,080 hours for 40 hour per week employee or 2,912 (two-thousand nine hundred twelve) hours for 56 hour per week employee but will be forfeited upon retirement.

Unused accumulated sick leave at time of retirement may be converted to additional service credit at the rate of 0.004 year of service credit for each day of unused sick leave (i.e., 250 days of sick leave equals one additional year of service credit).

The City of San Jose will report only those days of unused sick leave that were accrued by the member during the normal course of employment. Additional days of unused sick leave reported for the purpose of increasing the member's retirement benefit are prohibited. This benefit will not increase the maximum percentage allowable.

XIV. Employees Sharing Cost of Additional Benefits Section 20516

San Jose Police Officers and San Jose Firefighters eligible for this benefit shall contribute 1% additional retirement contribution to the cost of pension payments. A max of 10% of employee contributions towards pension.

This benefit allows a contracting agency or an agency that initially contracts with CalPERS to share the cost of additional retirement benefits with the employees as a result of a written agreement with the employee group.

No additional valuation is required if one has already been done for the additional retirement benefits whose cost is to be shared. The employer's rate will simply be reduced by the agreed upon percentage cost sharing.

There are two methods of requesting an actuarial study:

3. If the agreement with the employees specifies a definite percentage increase in the employee rate, such as 1.0%, 2.0%, etc., the valuation can be done on that basis.
4. If the agreement with the employee group is indefinite, the agency may wish to request several valuations, with the employees paying 0.5%, 1.0%, 1.5%, etc.

There are several points to be emphasized:

6. This provision requires that the employer and the employees agree in writing to share the cost of the applicable benefits.
7. The increase in the member contribution rate will be effective as of the effective date of the amendment to the contract. To reduce the percentage the employees have agreed to cost share at a later date, the agency will need to request an amendment to the contract.
8. The increased member contributions will be credited to each member's account as normal contributions and will be included in the refund of accumulated contributions to members who separate from CalPERS covered employment and elect to withdraw their contributions.
9. Some of the optional benefits available, such as 1959 Survivor Benefits and Post-Retirement Survivor Allowance, may not be applicable to all employees. However, if the agency includes such benefits in conjunction with Section 20516, the contribution rate would increase for all employees in the applicable member group.
10. It is also possible to share the cost of formulas other than the minimum formulas, which are the 2% @ 60 for local miscellaneous and the 2% @ 55 for local safety members.

Section 20516 also permits an employer to make an independent agreement with its employees to share the cost of any optional benefit <u>without</u> requiring an amendment to the contract. Any such agreement in a memorandum of understanding, which is inconsistent with this section, shall not be a part of the contract between the agency and this system.

<u>X. Military Service Credit Section 21024</u>

(a) "Public service" with respect to a local member, other than a school member, also means active service with the Armed Forces or the Merchant Marine of the United States, including time during any period of rehabilitation afforded by the United States government other than a period of rehabilitation for purely educational purposes, and for six months thereafter prior to the member's first employment by the employer under this section in which he or she was a member.
(b) Any member electing to receive credit for that public service shall make the contributions as specified in Sections <u>21050</u> and <u>21052</u>. However, any eligible member who requests costing of service credit between January 1, 2001, and December 31, 2003, may, instead of making those contributions, make the payment calculated under this article as it read on December 31, 2000, which payment shall be made in the manner described in Section <u>21050</u>.
(c) The public service under this section shall not include military service (1) in any period for which credit is otherwise given under this article or Article 4 (commencing with Section <u>20990</u>) or (2) to the extent that total credit under this section would exceed four years.
(d) Notwithstanding Section <u>21034</u>, a member may select which of two or more periods of service entitles him or her to receive public service under this section.
(e) This section shall apply to a member only if he or she elects to receive credit while he or she is in state service in the employment of one employer on or after the date of the employer's election to be subject to this section.

(f) This section shall not apply to any contracting agency nor to the employees of any contracting agency until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or in the case of contracts made after this section takes effect, by express provision in the contract making the contracting agency subject to this section. The amendments to this section made during the second year of the 1999–2000 Regular Session shall apply to contracts subject to this section on January 1, 2001.

XI. Fourth Level of 1959 Survivor Benefits Section 21574

This benefit provides a higher level of 1959 Survivor Benefits to survivors of a member who dies prior to retirement. The benefit is paid in addition to the Basic Death Benefit, the 1957 Survivor Benefit, or, if applicable, the Pre-Retirement Optional Settlement 2 Death Benefit but would be reduced by the amount of the Special Death Benefit, if payable. Concurrent coverage under this section and Social Security is prohibited, but an agency may provide the benefit for the full formula members of a divided miscellaneous member group. For agencies first contracting for the 1959 Survivor Program, members in employment prior to the effective date of the amendment may elect not to be covered, however, participation is required for all future hires who are not covered under Social Security (Section 21577).

A spouse or domestic partner is eligible if he or she (1) has care of eligible children, or (2) is age 60 or older. Children are eligible if under age 22 and unmarried or disabled regardless of age.

The monthly allowance payable to eligible survivors under this section is as follows:

Spouse or domestic partner with two or more eligible children;
or three or more eligible children only $2,280

Spouse or domestic partner with one eligible child; or two eligible children only ... $1,900
One eligible child only; or surviving spouse or domestic partner at age 60 or older;

or dependent parents $950

The normal cost for public agencies contracting or amending to provide the Fourth Level will be calculated based on the term insurance funding method. This rate will be calculated on the pool experience rather than individual employer experience. The actual employer cost for agencies currently providing 1959 Survivor Benefits who amend to provide the Fourth Level will vary depending upon each agency's 1959 Survivor funding level.

If there is a deficit in the agency's 1959 Survivor funding (an unfunded accrued liability) based on the Fourth Level benefit, this unfunded liability and the five years of employer normal costs shall be amortized and paid for over a period of five years, the first payment billed in June and due in July following the effective date of the amendment and the remaining four payments due by July 15, of each following year. If there is a surplus in the agency's 1959 Survivor funding, the surplus shall be amortized and used to offset the five years of employer normal costs.

At the end of the first five years, employers in the Fourth Level pool will pay only the pool's net premium.

An operative date for this benefit is established at the time of amendment.

XII. Alternate Death Benefit for Local Fire Members Credited with 20 or More Years of Service Section 21547.7

The surviving spouse, domestic partner or eligible children of a deceased firefighter member, who is credited with 20 or more years of CalPERS covered service and whose death occurs while in the employ of a local agency contracting for this benefit, may elect to receive the Alternate Death Benefit in lieu of the lump sum Basic Death Benefit or the 1957 Survivor Benefit. If the member had not attained minimum retirement age at the time of death, the Alternate Death Benefit is calculated based on the member's total service credit with all employers (including the service credit earned while in the employ of the agency contracting for this benefit) as though the member had retired at age 50 and elected Option 2W. Option 2W provides the highest monthly allowance to a beneficiary.

If the member had attained minimum retirement age at the time of death, the benefit is calculated as though the member retired on the date of death (from the employing agency and all previous CalPERS covered employers) and elected Option 2W. If the deceased firefighter had not attained the minimum retirement age at death and had service credit with previous CalPERS agencies, the cost of the Alternate Death Benefit will be the liability of the employing agency, except for a partial offset of costs resulting from a transfer of the member's contributions from all previous employers to the employing agency. The increase in liability not offset by this transfer will be paid by the agency contracting for this benefit and employing the member on the date of his/her death. If the deceased firefighter had attained minimum retirement age at death, the increased cost of the benefit (regardless of whether the member has service credit with another CalPERS employer) is the liability of the agency contracting for this benefit and employing the member on the date of his/her death.

XVIII. Supplemental Retiree Benefit Reserve

The Supplemental Retiree Benefit Reserve (SRBR) will be closed to all participatory members in the TIER II retirement plan. All members who voluntarily irrevocably move into the TIER II retirement plan shall forfeit all rights to any future SRBR earnings and or payments.

XIII. Retiree Health and Dental Care

All TIER II participants shall receive all Retiree Health and Dental insurance benefits as TIER I members.

XIV. Retiree Health Care Pre-Funding

The City and the Union agree to continue to pre-fund the fire and police retiree medical and dental healthcare benefits as described in both of the current the SJPOA and IAFF Local 230 memorandum of agreements.

XV. Non-Duplication of Benefits

A retiree may not be simultaneously covered by City sponsored plan-provided medical benefits as a retiree, and as a dependent of another City retiree or City employee.

TIER I: RETIREMENT BENEFITS FOR CURRENT EMPLOYEES

Current Retirement Benefits in effect for both SJPOA and IAFF Local 230 members respectively shall remain status-quo but for the following provision changes.

I. Eliminate Sick Leave Payoff

Provisions for sick leave payoff shall be eliminated in SJPOA and IAFF Local 230 Memorandums of Agreements.

II. Credit Unused Sick Leave to Service Credit Section 20965

In exchange for eliminating Sick Leave Payoff the following Credit for Unused Sick Leave Service Credit Provisions shall apply for up to 1 year of all unused sick leave hours. Either (two-thousand eighty) 2,080 hours for 40 hour per week employee or 2,912 (two-thousand nine hundred twelve) hours for 56 hour per week employee. Sick leave hours may be accrued beyond 1 year of service time either (two-thousand eighty) 2,080 hours for 40 hour per week employee or 2,912 (two-thousand nine hundred twelve) hours for 56 hour per week employee but will be forfeited upon retirement.

Unused accumulated sick leave at time of retirement may be converted to additional service credit at the rate of 0.004 year of service credit for each day of unused sick leave (i.e., 250 days of sick leave equals one additional year of service credit).

The City of San Jose will report to Retirement Services only those days of unused sick leave that were accrued by the member during the normal course of employment. Additional days of unused sick leave reported for the purpose of increasing the member's retirement benefit are prohibited. This benefit will not increase the maximum percentage of retirement allowable.

The City of San Jose shall direct retirement services to perform and add into the valuation the value of this benefit. The City of San Jose shall be 100% responsible for the normal cost determined by this valuation. Estimated impact on normal cost to be 0.1%-0.2% of payroll for both groups.

III. Supplemental Retiree Benefit Reserve

The San Jose Police Officers Association and San Jose Firefighters, IAFF Local 230 agree to discuss and determine legal and equitable ways to address the Supplemental Retiree Benefit Reserve (SRBR) program in the Police and Fire Department Retirement Plan.

Either the City or the Unions, may provide notice to the other of its request to discuss the SRBR program. Upon such notice, the parties shall continue these discussions within ten (10) calendar days after the City or Union receives notice from the other.

The City and Union shall meet and confer in good faith in an effort to reach an mutual agreement. If the parties are at impasse and no agreement is reached on those issues that are a mandatory subject of bargaining, the parties shall submit such issues for determination in accordance with the applicable provisions under City Charter section 1111.

IV. Retiree Health Care Pre-Funding

- The City and the Union agree to continue to prefund the fire and police retiree medical and dental healthcare benefits as described in both of the current the SJPOA and IAFF Local 230 memorandum of agreements.

V. Non-Duplication of Benefits

~~A retiree may not be simultaneously covered by City sponsored plan-provided medical benefits as a retiree, and as a dependent of another City retiree or City employee.~~

September 27, 2011

Robert Sapien, Jr.
President
San Jose Firefighters, IAFF Local 230

George Beattie
President
San Jose Police Officers Association

EXHIBIT 8

BOLTON PARTNERS

September 26, 2011

Via Email & U.S. Mail
Robert Sapien
President
San Jose Fire Fighters, Local 230
425 E. Santa Clara Street, Suite 300
San Jose, CA 95113

Re: Benefit changes

Dear Robert,

The San Jose Fire Fighters asked us to look at the savings associated with replacing the current retirement plan with an alternate (less expensive) plan. To make my estimate I depended on Segal's most recent Actuarial Valuation Report (as of June 30, 2010) as it pertains to the pension cost for the City of San Jose Fire Fighters. My understanding is that this report shows the most recently available plan costs and assumptions used to calculate these costs. I also relied on the June 30, 2010 actuarial valuation report for the OPEB plan dated April 27, 2011 and performed by Segal and similar Cheiron reports for the Federated plan.

Overview

Our projection shows that there would be a $277 million savings over five years when we compare the Union proposal to the City's forecast. Table 1 shows our attempt to reproduce the City's cost projections through FY16. Table 5 represents our cost projection of the Union's proposal. If you compare our projection for the five years from FY12 through FY16, the cumulative City contribution drops from $987.9 million in Table 1 to $711.4 in Table 5.

What is the Unions' proposal? The Police and Fire Unions are proposing to gradually replace their current retirement plan with the CalPERS 2% at 50 plan. Current retirees would stay behind in the current plan. Current employees would be given the option to stay in the current plan or move to the CalPERS 3% at 55 (Tier 2). New hires (7/1/12 and later) would be required to join the CalPERS a 2% at 50 plan (Tier 3). All employees in CalPERS would pay 10% in employee contributions and give up their sick leave payouts.

Proposed benefit changes

The formulas for the 3% at 55 and 2% at 50 are attached since their titles do not fully describe the benefit rates at all ages. These can also be found on pages 23 and 30 of the following link:

http://www.calstate.edu/Benefits/pdf/CalPERS_Pub7-booklet.pdf

CalPERS also has a list of the jurisdictions with 3% at 55 benefit. I have attached that list but it can also be found at:

http://www.calpers.ca.gov/eip-docs/employer/program-services/retirement/3percentat55.pdf

Generally speaking the 3% at 55 provides a lower benefit for Firefighters than the current plan since they can currently get 3% at the earlier of 55/20, 50/25 or 30. The average firefighter is hired around age 29 so many get 3% before age 55 under the current plan. For police officers the situation is a bit less clear. The average police office is hired at age 27 (many are hired at younger ages). By 52 the "average" police officer will receive 70% currently (2.5% x 20 + 4% x 5) vs. 66% (2.64% x 25) under the 3% at 55 CalPERS formula. By 55 the "average" police officer will receive 82% currently (2.5% x 20 + 4% x 8) but would receive 84% (3% x 28) under the 3% at 55 CalPERS formula. The advantage at certain ages is likely more than offset by police officers working longer if they move to the CalPERS 3% at 55. However, just as important is the issue of what features are selected under the CalPERS formula. The cost to provide the 82% pension under the San Jose plan is more valuable than the 84% under CalPERS if you replace either (1) the San Jose post retirement survivor benefit with the basic CalPERS survivor benefit that the retiree needs to pay for or (2) lower the San Jose 3% COLA to CalPERS 2% basic COLA. As noted below, those who transfer also will give up their unused sick leave payouts.

The City is going to look at the bottom line: What happens if we do nothing and what can we afford? What we can afford is not the same as "what can we get away with" but neither is an actuarial question. We understand that the City often talks about where cost will be by FY16. We understand that the City has a somewhat out dated projection of $224.5 million by FY16 for Fire and Police pension and OPEB cost (note the $224.5 million is the Fire and Police portion of the $400.7 million amount shown on page 8 of the City Managers May 2, 2011 Budget Memo). We were able to match the $224.5 million contribution by rolling forward 2010 actuarial valuations ignoring any gains or losses since 6/30/10. The following summarizes our comparison:

Table 1: Base Line (City contributions in millions $)

	FY11	FY12	FY13	FY14	FY15	FY16
F&P Pension	$ 99.1	$ 132.0	$ 153.1	$ 177.3	$ 195.1	$ 201.4
F&P OPEB	$ 13.5	$ 16.9	$ 21.2	$ 25.8	$ 30.7	$ 34.4
Total	$ 112.6	$ 148.9	$ 174.3	$ 203.1	$ 225.8	$ 235.8
Old City Projection	$ 100.0	$ 143.6	$ 176.9	$ 201.6	$ 217.7	$ 224.5
Difference	$ 12.6	$ 5.3	($ 2.6)	$ 1.5	$ 8.1	$ 11.3

However, even before discussing plan changes, we know that there have been two material gains since the end of FY10. These include FY11 investment returns in the pension fund of about 18% and a pay cut of 10% for FY12 and no raises in FY13. If we reflect the FY11 investment gains and the agreed to pay cuts we get the following contribution:

Table 2: Base line with known gains (City contributions in millions $)

	FY11	FY12	FY13	FY14	FY15	FY16
F&P Pension	$ 99.1	$ 114.0	$ 125.1	$ 142.7	$ 153.4	$ 152.8
F&P OPEB	$ 13.5	$ 16.9	$ 21.2	$ 25.8	$ 30.7	$ 34.4
Total	$ 112.6	$ 130.9	$ 146.3	$ 168.5	$ 184.1	$ 187.2
Old City Projection	$ 100.0	$ 143.6	$ 176.9	$ 201.6	$ 217.7	$ 224.5
Difference	$ 12.6	($ 12.7)	($ 30.6)	($ 33.1)	($ 33.6)	($ 37.3)

In our calculations, the City contribution rates shown for the police/fire pension plan are before the application of any credit from the SRBR account to reduce the City's contribution rate. All of our projections preserve the existing SRBR account balance.

The savings in FY16 for Fire and Police is $48.6 million ($11.3 + $37.3). We were asked to separate the results between the two sources and provide the same information for the Federated plan.. The chart below summarizes the estimated reduction in City's pension contribution in FY2016 due to these two favorable factors.

Table 3: City cost savings in FY2016 due to payroll decreases (FY2012, FY2013) and favorable FY2011 asset return *($ in millions)*

	Police/Fire	Federated	Total
Payroll decrease	$ 26.6	$ 8.6	$ 35.2
Asset return	$ 22.0	$ 12.1	$ 34.1
Total City cost savings	$ 48.6	$ 20.7	$ 69.3

We pointed out that the amount of the FY11 investment gain is unknown but that since 6/30/2011 returns have not been good. We always face the issue of how material must events be since the end of the last fiscal year to require recognizing them in our decision making process. Different people will come up with different answers to this question and the same person might have had one answer when I wrote this letter and a different answer by the time they actually read the letter.

Savings due to proposed benefit changes

Next we discuss the savings associated with any proposed benefit changes. For purposes of this letter we have ignored any OPEB changes. I understand that the POA's actuary is looking into OPEB savings. While of long term importance, from Table 1 we can see that OPEB cost are significant but might not be the main cost driver between now and FY16.

I would also like to point out that the OPEB costs are only as high as they are because San Jose has a goal to prefund OPEB. Many employers abandoned trying to prefund OPEB because of budget problems. Prefunding is a good goal particularly where employees are contributing and we have generational issues not just between generations of tax payers but generations of employees. However, funding is not required either legally or by the accounting rules. Perhaps the City should consider ramping up to prefunding over a period longer than five years since many other employers have backed off any attempt to prefund.

We have reflected in the tables 4 and 5 below the retirement options discussed on page one of this letter to move to CalPERS. All of these results have Excel models which contain more details on the assumptions used. The models also have more options (e.g. selection of amortization periods) and we have left some of the actuarial documentation out of this memo and placed it in the model which you have. It is also worth noting that we relied on CalPERS Normal Cost information (for base benefits and added features). We used a slightly higher value for the buy up to the 3% COLA.

We will call the CalPERS 3% at 55 plan for current employees the Tier 2 Plan. For new hires we will call the CalPERS 2% at 50 plan the Tier 3 Plan.

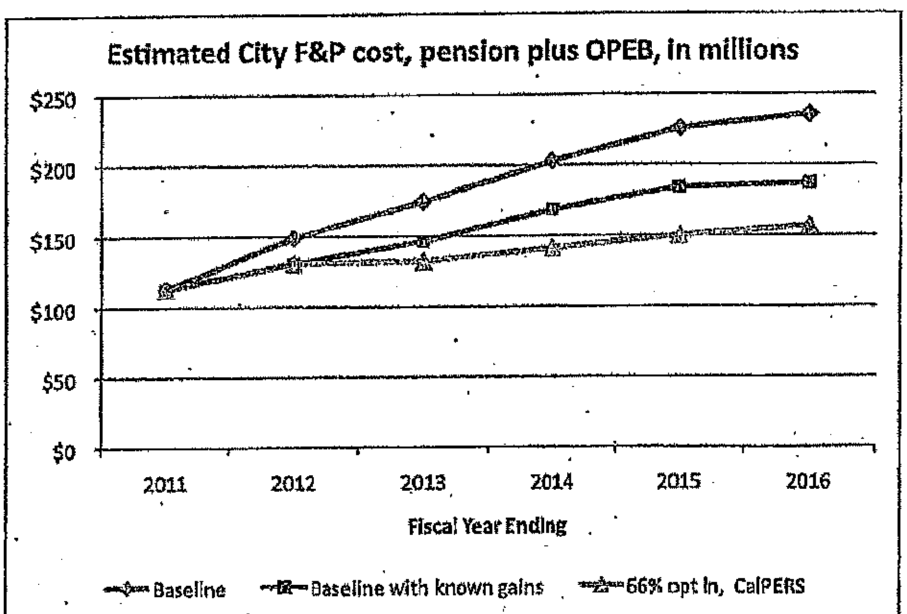
Current employees are assumed to retain a maximum COLA of 3% whereas all new employees are assumed to have the default CalPERS maximum COLA of 2%. All employees are assumed to contribute at the CalPERS 9% of pay contribution rate plus an additional 1% for a total of 10%.

The table below summarizes the details of the two CalPERS plans. The features that are different among the two plans are highlighted in yellow.

Table 4:

	Tier 2	Tier 3
Base benefit	3% at 55	2% at 50
Maximum COLA	3%	2%
Final Average Earnings based on (20042)	3 year salary	3 year salary
Credit for unused sick leave (20965)	Yes	Yes
Alternate pre-retirement death benefit (for fire only 21547.7)	Yes	Yes
Post retirement survivor allowance (21624)	Yes	Yes
Improved disability retirement (21427 and 21430)	Yes	Yes
CalPERS Gross NC as % of payroll – police	33.73%	28.94%
CalPERS Gross NC as % of payroll – fire	33.86%	29.07%

Police and Fire have slightly different normal cost due to the 21547.7 benefit.



As stated earlier, details on the methods and assumptions used are contains in the notes section of our excel model. However, we would like to point out one set of changes related to the transfer to CalPERS.

- First, the spread between the actuarial value of assets and the market value. This unrecognized loss in the Fire and Police plan is about $42 million on 6/30/11. While this is down from the $353 million a year earlier, you still cannot buy a cup of coffee with it since it does not exist. If we transfer some funds to CalPERS the market value of assets is all that matters.
- Second, the current plan has a number of layers of amortization periods. If we transfer some participants to CalPERS, it is likely that CalPERS will only have one amortization period initially.

To account for these two issues, under the CalPERS models we reset the 6/30/2011 actuarial value of assets to the market value (increasing contributions in FY13) but also reset the amortizations into one single 16 year "base" (decreasing contributions in FY13). On a net basis there was almost no change in FY13 (down by about $115,000) but more importantly the prior investment losses are behind us and no longer produce a trending up of the cost as a percentage of payroll.

SRBR

Attached is an appendix with some thoughts on the SRBR. As has been noted by others, the SRBR provision is not currently being prefunded. Based on the Cheiron methodology in the Federated plan, we believe that Cheiron will put a cost on the SRBR of about $2.7 million/year, some of which the employees may be asked to pay for. Like any other benefit, the SRBR comes with certain rights. There has been some discussion about replacing the SRBR with some other benefit such as a "purchasing power protection" on the COLA. This would require some time to find a benefit of equal value and given the limited scale of the SRBR cost, we have not made this a priority.

Sick Leave Payout Savings

Page 27 of the City Manager's May 2, 2011 addendum discusses sick leave payouts. It shows total City payouts of $14.61 million in FY10. I don't have a breakdown between sworn and non-sworn employees but I understand that in FY08 71% of the payout was for sworn employees. The Union is proposing to eliminate the sick leave payout for all employees. As shown in the Table 4, we are proposing to add the CalPERS "20965" feature which would provide pension credit for unused sick leave and a comparable provision for Tier 1 employees. This added CalPERS cost is netted out of the pension savings shown above. Savings of about $10 million in annual sick leave payouts would be achieved, offset by the cost to provide pension credit for those who stay behind in Tier 1.

Conclusions

The first conclusion is that significant improvements have substantially reduced the City's $224.5 prediction for FY16. Using current assumptions and reflecting FY11 investment gains and payroll concession alone, the FY16 contribution is expected to be $48.6 million less than predicted ($69.3 million if you included the Federated plan).

The second conclusion is that allowing members to transfer into CalPERS will save money but most of this savings is in the later years unless a significant number of employees were to transfer (which we think is possible). The CalPERS normal cost is anywhere from 4% to 10% of pay less than the normal cost for the current plan. The normal cost savings for current employees would be on the low end of this range. Also, since the first new hire required to go into CalPERS would start on 7/1/12, this only impacts two years in our projection (FY15 and FY16).

In summary, our projection shows that there would be about a $277 million savings over five years when we compare the Union proposal to the City's forecast.

I am a member of the American Academy of Actuaries and I meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

Please feel free to call me with any questions.

Sincerely,

BOLTON PARTNERS, INC.

Thomas Lowman, FSA, MAAA, EA

Appendix 1 - Savings

Table 5: CalPERS 66% opt in (Tier 2) and new hires in CalPERS 2% at 50 (Tier 3) (City contributions in millions $)

The table below summarizes the results under the scenario

- 66% of current actives opt into Tier 2
- Tier 2 employees' benefits are computed using 3 year final average earnings
- 34% of current actives remain in the current plan
- Tier 3 (new hires) receive 2% at 50 Plan, plus lower OPEB benefits

	FY11	FY12	FY13	FY14	FY15	FY16
F&P Pension	$ 99.1	$ 114.0	$ 111.1	$ 115.6	$ 120.1	$ 124.6
F&P OPEB	$ 13.5	$ 16.9	$ 21.2	$ 25.8	$ 29.8	$ 32.3
Total	$ 112.6	$ 130.9	$ 132.3	$ 141.4	$ 149.9	$ 156.9
Old City Projection	$ 100.0	$ 143.6	$ 176.9	$ 201.6	$ 217.7	$ 224.5
Difference.	$ 12.6	($ 12.7)	($ 44.6)	($ 60.2)	($ 67.8)	($ 67.6)

Appendix 2 – SRBR

In their May 2011 Federated plan experience study Cheiron put a range of cost on the Federated SRBR and recommended a load to the Normal Cost equal to 0.35% of assets. This approach is known as the Term Cost Method of reflecting gainsharing programs. The Federated and F&P SRBR are materially different in the portion of any excess returns allocated to the SRBR. We expect that Cheiron will put a significantly lower cost on the F&P SRBR both because of the differences in the SRBR provisions and in the differences in the asset mix between the two plans. The benefit differences are as follows:

- F&P: The SRBR takes 10% of the average return over the last five years in excess of the actuarial assumption and places it into the SRBR fund. At 7/1/2010 the F&P SRBR fund had $33.3 million. Money from the SRBR can go either for retiree benefits or to reduce the City's contribution. The amount going for benefits is equal to the interest on the SRBR. The amount going to reduce the City's cost is 10% of the increase in the first year's cost, but limited to of 5% of the SRBR principal and only occurs if there is an increase in the City's contribution due to investment losses. This is all described on page 41 of the Segal 2010 AVR.
- Federated: There is a description of the SRBR on page 12 of the Cheiron 2011 Experience Study. It says that the SRBR "receives 10% of any excess earnings in a given year. Excess earnings are defined as the actual investment earnings less interest credited to member accounts and interest up to the assumed rate that is credited to the SRBR and the General Reserve " The Experience Analysis also says that the SRBR money "cannot be transferred back to the General Reserve to support the Basic or COLA benefits." The Federated SRBR fund had $28.3 million at 6/30/2010.

The asset mixes in the two plans are also significantly different, with the variance in investment returns (standard deviation) likely larger for the Federated plan than the F&P plan. The difference in investment mix, based on information in the July 1, 2010 actuarial valuation report and the Federated plan experience study is shown in the table below. Because of the much higher portion of assets in fixed income securities and much lower portion in equities and alternative investments, we believe that the investment advisors would likely expect a less variable investment return for the P&F plan, resulting in a lower adjustment in the investment return to reflect the SRBR.

Investment Category	Federated	P&F
Equities	49%	37.1%
Fixed Income (including international)	20%	40.5%
Opportunity	5%	0%
Hedge Funds	5%	0%
Private Equity	6%	4.4%
Real Estate	5%	7.9%
Real Assets	10%	0%
Cash and equivalents, and receivables	0%	10.3%
Other investments	0%	(0.2%)
Total	100%	100.0%

Appendix 2 – SRBR

As previously noted, Cheiron suggested funding the Federated SRBR by adding an additional amount to the annual contributions equal to 0.35% of assets. Because the Federated SRBR is based on annual returns and the F&P SRBR is based on five-year average returns we expect the F&P load factor be about 44% of the Federated factor (0.35% x 44% = 0.144%). Since the purpose of funding is to provide assets for employee benefits and some of the SRBR funds go to reduce future City contributions, there should be a further reduction. Also, because the P&F assets are invested more conservatively, there should also be a further reduction. We have not yet modeled these two adjustments. However, since some reduction is required, and we believe that these two differences will significantly reduce the adjustment, we are lowering the 0.144% to 0.1% (a 31% decrease). We realize that the Cheiron calculation may not be consistent with other results provided years ago by the system and some may wish to try and reconcile these differences. However, working off of the Cheiron result and based on a market value of assets of about $2.7 billion, the F&P SRBR has a current cost of about $2.7 million/year.

Appendix 3 – CalPERS Benefit Rate Charts

2% at 50

Age	50	51	52	53	54	55+
Benefit Factor	2.000	2.140	2.280	2.420	2.560	2.700
Years of Service	Percentage of Final Compensation					
5	10.00	10.70	11.40	12.10	12.80	13.50
6	12.00	12.84	13.68	14.52	15.36	16.20
7	14.00	14.98	15.96	16.94	17.92	18.90
8	16.00	17.12	18.24	19.36	20.48	21.60
9	18.00	19.26	20.52	21.78	23.04	24.30
10	20.00	21.40	22.80	24.20	25.60	27.00
11	22.00	23.54	25.08	26.62	28.16	29.70
12	24.00	25.68	27.36	29.04	30.72	32.40
13	26.00	27.82	29.64	31.46	33.28	35.10
14	28.00	29.96	31.92	33.88	35.84	37.80
15	30.00	32.10	34.20	36.30	38.40	40.50
16	32.00	34.24	36.48	38.72	4.96	43.20
17	34.00	36.38	38.76	41.14	43.52	45.90
18	36.00	38.52	41.04	43.56	46.08	48.60
19	38.00	40.66	43.32	45.98	48.64	51.30
20	40.00	42.80	45.60	48.40	51.20	54.00
21	42.00	44.94	47.88	50.82	53.76	56.70
22	44.00	47.08	50.16	53.24	56.32	59.40
23	46.00	49.22	52.44	55.66	48.88	62.10
24	48.00	51.36	54.72	58.08	61.44	64.80
25	50.00	53.50	57.00	60.50	64.00	67.50
26	52.00	55.64	59.28	62.92	66.56	70.20
27	54.00	57.78	61.56	65.34	69.12	72.90
28	56.00	59.92	63.84	67.76	71.68	75.60
29	58.00	62.06	66.12	70.18	74.24	78.30
30	60.00	64.20	68.40	72.60	76.80	81.00

Appendix 3 – CalPERS Benefit Rate Charts

3% at 55

Age at Retirement	Benefit Factor	Years Needed to Attain 90%
50	2.400%	37.500
50 1/4	2.430%	37.037
50 1/2	2.460%	36.586
50 3/4	2.490%	36.145
51	2.520%	35.715
51 1/4	2.550%	35.295
51 1/2	2.580%	34.884
51 3/4	2.610%	34.483
52	2.640%	34.091
52 1/4	2.670%	33.708
52 1/2	2.700%	33.334
52 3/4	2.730%	32.967
53	2.760%	32.609
53 1/4	2.790%	32.258
53 1/2	2.820%	31.915
53 3/4	2.850%	31.589
54	2.880%	31.250
54 1/4	2.910%	30.928
54 1/2	2.940%	30.613
54 3/4	2.970%	30.303
55 or older	3.000%	30.000

Employer Code #	Agency Name	Safety Category	Amend Effective Date
1016	Piedmont	Safety	1/1/2004
622	Pinole	Safety	6/16/2003
142	Plumas County	Sheriff	10/20/2002
460	Port Hueneme	Police	6/24/2002
1297	Porterville	Safety	7/1/2006
242	Redondo Beach	Fire	7/1/2002
650	Reedley	Safety	9/6/2006
1273	Rescue Fire Protection District	Safety	7/13/2002
330	Richmond	Fire	10/20/2002
1131	Rincon Valley Fire Protection District	Safety	3/1/2003
79	Riverside	Fire	5/10/2002
1321	Ross Valley Fire Service	Safety	12/1/2000
1121	Sacramento	Fire	9/22/2001
472	Salinas Rural Fire District	Safety	9/1/2000
61	San Bernardino	Safety	7/1/2001
301	San Marino	Fire	7/15/2006
1467	San Miguel Consolidated Fire District	Safety	3/18/2001
384	San Pablo	Police	7/1/2001
996	Sand City	Police	5/1/2003
719	Santa Maria, City of	Fire	12/25/2004
54	Santa Monica	Police	11/19/2000
54	Santa Monica	Fire	12/16/2001
1856	Santa Monica Community College District	Safety	1/1/2003
598	Saratoga Fire Protection District	Safety	5/1/2002
426	Sausalito	Fire	6/1/2000
426	Sausalito	Police	11/1/2001
831	Scotts Valley Fire Protection District	Safety	6/14/2000
1700	Shafter	Police	12/26/2002
1674	Shasta Lake Fire Protection District	Safety	6/18/2000
670	Sierra County	Safety	3/10/2002
487	Sierra Madre	Police	8/27/2000
824	Simi Valley	Safety	10/12/2000
1424	Solana Beach	Lifeguards	7/12/2002
726	South Lake Tahoe	Fire	9/5/2001
448	Tehama County	CPO	7/1/2003
516	Tiburon Fire Protection District	Safety	6/1/2001
676	Tiburon, Town of	Safety	5/23/2004
158	Torrance	Fire	2/11/2001
19	Town of Hillsborough	Fire	6/25/2007
401	Town of San Anselmo	Fire	12/1/2000
401	Town of San Anselmo	Police	2/1/2007
198	Tracy	Fire	1/1/2005
1001	Tracy Rural County Fire Protection District	Safety	12/15/2004
897	Truckee Fire Protection District	Fire	9/1/2005
1944	Twain Harte Community Services District	Safety	1/1/2007

Employer Code #	Agency Name	Safety Category	Amend Effective Date
1365	Twentynine Palms Water District	Safety	9/28/2001
1271	Twin Cities Police Authority	Safety	1/6/2003
1873	Upper Lake Fire Protection District	Safety	7/1/2003
1643	West Almanor	Fire	10/02/2005
700	Winters	Police	6/20/2004
957	Woodbridge Rural County Fire Protection District	Fire	8/7/2005

EXHIBIT 9

DRAFT- October 27, 2011

PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS WHILE PRESERVING ESSENTIAL CITY SERVICES

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: *"The Employee Fair Pay Act for Fiscal Sustainability."*

Section 1: FINDINGS

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to increase dramatically in the near future. In addition, the City's accrued unfunded liability for other post employment benefits – primarily health benefits – is similarly increasing. To adequately fund these costs, the City would be required to make dramatic cuts to Essential City Services.

These cuts to Essential City Services have already created a public service emergency in the current fiscal year, an emergency that is projected to worsen significantly in Fiscal Year 2012-2013 and beyond. Because the cost of retirement benefits is rising so rapidly, and current economic conditions and legal restrictions severely limit revenue growth, there is no reasonable prospect that further critical reductions in Essential City Services can be avoided. By any measure, projected levels of services are unsustainable, and endanger the health, safety and well-being of the residents of San Jose.

Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that its pension and post employment benefit plans be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that pension and other post-employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

The voters hereby find that the facts and circumstances constitute an emergency within the meaning of the Meyers-Milias-Brown Act ("MMBA"), Government Code section 3504.5, and pursuant to the City's authority as a charter city under the California Constitution. *E.g.,* Cal. Const., Art XI, §5.

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Section 2: INTENT

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree, including any cost of living increases received by retirees as of the effective date of the Act.

This Act is not intended to grant any vested rights to any post employment benefit. The City expressly retains its authority to amend, change or terminate any retirement or other post employment benefit program provided by the City; provided, however, nothing in the Act shall be construed to require the forfeiture of any contribution made by an employee toward a pension plan benefit.

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Section 3. Measure Supersedes All Conflicting Provisions

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, as well as all ordinances, resolutions or other enactments.

Section 4. Reservation of Voter Authority

The voters expressly reserve the right to consider any change in matters related to pension and other post-employment benefits. The City Council shall have no authority to agree to any increase in pension and/or retiree healthcare benefits, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

Section 5. Reservation of Rights to City Council

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this measure, to ensure the preservation of the tax status of the plan, and to amend, change or repeal any retirement or other post employment benefit program subject to the terms of this measure.

Section 6. Current Employees

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (~~section~~ Section 8).

(b) ~~Unless they opt into a lower cost plan as provided in the Voluntary Election Program ("VEP," described herein),~~ ~~A~~All Current Employees who fail to opt in to the Voluntary Election

Program ("VEP," described herein) will share 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future.

(c) A Current Employee's share of the cost to amortize pension unfunded liabilities shall be 5% of pensionable pay starting June 24, 2012, and increased by 5% annually until the employee's proportionate share of the cost reaches 50% of the amortized pension unfunded liabilities, with each employee's share capped at 25% of the employee's pensionable pay.

(d) The starting date for an employee's compensation adjustment under this Section shall be June 24, 2012, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(e) Current Employees' share of the cost to amortize any unfunded liabilities shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(f) The City Council shall adopt by ordinance the procedure and formulae necessary to implement this Section.

Section 7: One Time Voluntary Election Program ("VEP")

The City Manager shall propose, and the City Council shall adopt by ordinance to be effective not later than June 30, 2012, a Voluntary Election Program ("VEP") for all Current

Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) where they acknowledge that they irrevocably relinquish their existing level of retirement benefits and have voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for prior service shall be preserved for payment at the time of retirement.

(b) On and after the effective date of the ordinance, pension benefits under the VEP shall be based on the following limitations:

(i) ~~(i)~~ the accrual rate shall be 1.5% of "final compensation", hereinafter defined, per year of service for future years of service only.

(ii) the maximum benefit shall remain the same as the maximum benefit for Current Employees.

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(iii) the current age of eligibility for service retirement under the existing plan as approved by the City Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 60 for employees in the Police and Fire Department Retirement Plan and the age of 65 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than age of 55 in the Federated City Employees' Retirement System and age of 50 in the Police and Fire Department Retirement Plan.

~~(iii)~~(iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually.

(iv) cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.

(vi) "final compensation" shall mean the average salary of the three highest consecutive years preceding the date of retirement.

(c) The cost sharing for the VEP for current service or current service benefits ("Normal Cost") shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan related to past service.

(d) For employees who opt into the VEP, survivorship benefits shall be the same as the survivorship benefits in Tier 2 (benefits for new employees ~~as described in Section 8.~~).

(e) VEP Disability Retirement Benefits.

(i) A service connected "disability" retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 45% of annual pensionable pay based on the average of the highest three consecutive years of service.

(ii) A non-service connected disability retirement benefit shall be as follows:

a. The employee or former employee shall receive 1.5% times years of City Service (minimum 20% and maximum of 37.5%) of annual pensionable pay based on the average of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

(iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

Section 8: Future Employees – Limitation on Retirement Benefits – Tier 2

To the extent not already enacted, the City Manager shall propose, and the City Council shall adopt by ordinance, to be effective not later than June 30, 2012, a retirement program for employees hired on or after the effective date of such ordinance. This retirement program – for new employees – shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

(a) The maximum City contributions shall not be less than 6.2% nor greater than 9% of pensionable salary. In no event shall the City contribution to such plan exceed 50% of the cost of the Tier 2 plan (both normal cost and unfunded liabilities). The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than age of 55 in the Federated City Employees' Retirement System and age of 50 in the Police and Fire Department Retirement Plan.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, the measuring period for determining "final compensation" shall be the average salary of the three highest consecutive years preceding the date of retirement.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 1.5% per year of service.

(f) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System and at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(g) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan shall create a vested right to any benefit.

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Section 9: Disability Retirements

To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

(a) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

(i) An employee cannot do work that they did before; **and**

(ii) It is determined that the employee cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); **and**

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(b) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

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Section 10: Emergency Measures to Contain Retiree Cost of Living Adjustments

(a) The City Manager shall propose, and the City Council shall adopt by ordinance, the following, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(i) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees until January 2017;

After January 2017, the City Council may restore COLAs prospectively (in whole or in part), based upon the following considerations: (a) whether the fiscal emergency has eased sufficiently to ensure that the City can provide services protecting the health and well-being of City residents; (b) whether the criterion set forth Section 14 (b) (ii) has been met for the three year period beginning January 2017 or thereafter; and (c) whether retirees are continuing to receive a substantial and fair pension.

(ii) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1% for Current Employees who opted into the VEP and employees in Tier 2.

Section 11: Supplemental Payments to Retirees

Any supplemental payments to retirees in addition to those authorized herein shall not be funded from plan assets.

Section 12: Retiree Healthcare

(a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

(c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

Section 13: Actuarial Soundness (for both pension and retiree healthcare plans)

(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.

(b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.

(c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:

1) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and

2) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.

(d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:

1) the funding objectives and actuarial assumptions of the plans; and

2) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

Section 14: Safety Net Provisions

(a) Preservation of Essential City Services:

At any time that any of the following conditions arise as determined in the reasonable discretion of the City Manager: ~~:~~ (Condition 1) Essential City Services are not provided at or above the service levels of January 1, 2011; (Condition 2) any library, community center, fire station, or police station or substation built or under construction as of January 1, 2011, is not operational due to a ~~budget~~lack of funds; or (Condition 3 ~~(limited as described herein)~~) any of the City's pension or retiree healthcare plans have unfunded liabilities calculated on a market value or actuarial value greater than those liabilities existing as of June 30, 2010, then the Mayor, the City Council, the City Manager and other officers of the City, or any arbitrator or board of arbitrators, shall be prohibited from making or approving any contract, memorandum, agreement, award, grant, decision, resolution, ordinance or other official or binding act that allows or requires the City to do any of the following, without prior approval by the voters: (i) pay for unused sick leave time (ii) pay for accrued and unused vacation time, except at separation of City service as may be required by applicable state or federal law; (iii) grant retroactive ~~increase~~ compensation increases to ~~for~~ members of bargaining units after an applicable memorandum of agreement has ~~contracts~~ expired prior to the date ~~until~~ a new contract is in effect; (iv) give automatic step increases or other raises for time in the job that are not based on performance;

(v) use hours not actually worked in determining eligibility for overtime; (vi) pay overtime to executive, professional, or administrative employees or to other employees who are exempt from overtime requirements under the Fair Labor Standards Act ("FLSA"), or who are otherwise exempt from the FLSA; (vii) pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to eliminate duplication of benefits for the same cause of disability; (viii) pay workers' compensation benefits beyond what state or federal laws require; (ix) allow existing or former employees to grant workers' compensation or disability benefits for existing or former employees; (x) calculate retirement benefits on any compensation other than actual base salary paid, or ~~years~~ pensionable regular hours (not including overtime) and paid leave (up to 2080 hours) ~~actually worked for the City of San Jose,~~ except as required by applicable state law; (xi) make layoff or rehiring decisions without considering individual employee performance; (xii) pay for more than 50% of the increase in the cost of healthcare benefits. ~~Nothing in this section shall be construed to mandate a particular level of service or method of service delivery.~~

Nothing in this Act shall be construed to mandate a particular level of service or method of service delivery nor to interfere with or limit the City from adopting more efficient or less costly means of delivering services.

For the purposes of this Act, unfunded liabilities for employees covered under the Federated City Employee's Retirement System and the Police and Fire Department Retirement Plan shall be treated separately. Thus, if Condition (3) arises, the consequences as specified in this Act shall apply only to those employees in the plan that has the unfunded liabilities.

Accordingly, -if there is an unfunded liability in only the Federated plan the safety net provisions shall apply to employees in the Federated plan, and not those in the Police and Fire plan. Similarly, if there is an unfunded liability in only the Police and Fire plan, the safety net provisions shall apply only to employees in the Police and Fire plan.

(b) Unfunded Liabilities in Pension and Other Post Employment Benefit Programs

The City Manager shall propose, and the City Council shall adopt by ordinance, safety net provisions with the following minimum features:

(i) At any time City pension or retiree healthcare plans have unfunded liabilities based on market value or actuarial value for pension or retiree healthcare greater than those existing on June 30, 2010, bonuses, or supplemental pension payments to retirees shall not be allowed, except upon prior approval of the voters.

(ii) The limitations shall be temporary and shall remain in effect until the unfunded liabilities based on market value or actuarial value have remained below the level of June 30, 2010 for three consecutive years.

Section 15: Savings and Severability

(a) This Act shall be harmonized and interpreted to be consistent with all federal and state laws, rules and regulations. If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective. This Act shall be broadly construed to achieve its stated purposes.

(b) In the event Section ~~6,~~ 7 or 10 (as that Section applies to Current Employees), of this Act is determined to be illegal, invalid or unenforceable as to Current Employees, then the Current Employees' share of the costs to amortize any unfunded liabilities shall be 50% of the plan covering the respective employees.

(c) In the event Section 6 (b) and (c), and/or the employee payment of the unfunded liability referenced in Section 15(b), is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 5% of compensation each year, capped at a maximum of 25% of pay or the equivalent of what would be 50% of the amortized pension unfunded liability.

(d~~c~~) The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act.

EXHIBIT 10

San Jose Police Officers and Fire Fighters

1151 No. Fourth St.
San Jose, CA 95112
Phone #(408) 298-1133

LOCAL 230

425 E. Santa Clara St.
Suite 300
San Jose, CA 95113
Phone #(408) 286-8718

November 11, 2011

Alex Gurza, Deputy City Manager
City of San Jose - Office of Employee Relations
200 E. Santa Clara Street
San Jose, CA 95113

RE: **Retirement Reform**

Dear Alex:

Please find the attached revised Proposal and Proposal Addendum.

In the proposal you will find some modifications including a lawful and cost saving proposal to address the SRBR in Tier I, and in the addendum to the proposal, you will find a proposal to ensure that critical public safety services are preserved and/or restored in 2012-13. Please note that the addendum to the proposal expires on November 17, 2011.

We look forward to seeing you and your team in mediation on Tuesday, November 15, and 1:30 p.m. at the SJPOA offices.

Thank you,

Robert Sapien, Jr., President
San Jose Firefighters, IAFF Local 230

George Beattie, President
San Jose Police Officers Association

San Jose Police Officers and Fire Fighters

LOCAL 230

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**SAN JOSE POLICE OFFICERS ASSOCIATION
AND SAN JOSE FIREFIGHTERS, IAFF LOCAL 230
RETIREMENT REFORM PROPOSAL**

[As Amended, November 11, 2011]

TIER III: RETIREMENT BENEFITS FOR NEW EMPLOYEES

I. Pension Formula 2.0% @ 50 for Local Safety Members CALPERS Section 21362

The pension benefit for eligible employees hired on or after July 1, 2012, shall be administered by CalPERS and be entered into their Section 21362 2% @ 50 Full Formula. This formula provides to local safety members 2% of pay at age 50 for each year of service credited with that employer. The percent per year of service gradually increases for each age attained from 2% at age 50 to 2.7% at age 55+. Local safety members subject to the 2% @ 50 Full Formula contribute 9% of reportable earnings.

Local safety members who retire after the effective date of the contract amendment will be subject to this formula. The total allowance for service retirement under the 2% @ 50 formula cannot exceed 90% of final compensation.

II. Annual Cost of Living Allowance Increase - COLA Section 21335

Allowances for retired members are currently covered by an annual 2.0% maximum cost- of-living increase provided the Consumer Price Index (CPI) factor increases at least 2.0%.

For example: COLA for retired members shall be based on an annual Consumer Price Index (CPI) factor with a 2.0% maximum cost-of-living increase, whichever is lower.

III. Final Average Salary

The period for determining the average monthly pay rate when calculating retirement benefits will be from the highest paid consecutive 36 months.

IV. Post Retirement Survivor Allowance: Sections 21624, 21626, 21628

Upon the death of a member after retirement, an allowance shall be continued to the surviving spouse or domestic partner. A "surviving spouse or domestic partner" means for service retirements subject to this section, a husband or wife who was married to or a domestic partner who was registered as a domestic partner with the member at least one year prior to the member's retirement and continuously to the date of the retired member's death and for disability retirements subject to this section, a husband or wife who was married to or a domestic partner who was registered as a domestic partner with the member on the date of his or her retirement and continuously to the date of his or her death.

If there is no surviving spouse or domestic partner, or if the spouse or domestic partner later dies, the allowance shall be continued to the eligible unmarried children collectively until all have reached age 18. Eligible children include disabled children over age 18 if the disability begins prior to age 18. If there is no surviving spouse or domestic partner or eligible child or children, the benefit would be paid to the surviving parent or parents of the deceased member who were dependent upon the member for support. If, at effective date of retirement, the member has no surviving spouse, domestic partner, eligible children, or dependent parents and elected an optional settlement, no allowance under this section shall be paid.

The allowance payable to the survivor(s) of a member who retires after the employer includes Sections 21624, 21626 and 21628 in its contract is determined as follows:

a. One-quarter of the retired member's unmodified allowance based on service subject to the modification for Social Security; or
b. One-half of the retired member's unmodified allowance based on service not subject to the modification for Social Security.

In accordance with Section 21628, the allowance payable to a retired member who chose Option 2, 3, or 4, or the beneficiary of such retirees shall be increased by 15%. For retirees who chose the Unmodified Allowance or Option 1, there is no increase in the retirement allowance but their eligible survivor(s) would receive the post-retirement survivor allowance upon the retired member's death.

Sections 21624, 21626 and 21628, all together, are applicable, by amendment, to contracting agencies. Sections 21624 and 21626 only are available to new contracting public agencies.

V. Improved Nonindustrial Disability Allowance for Local Safety Members Section 21427

The disability retirement allowance of a local miscellaneous and local safety member would be raised to 30% of final compensation for the first five years of service credit, plus 1% for each additional year of service to a maximum of 50% of final compensation.

If the member is under age 60, the disability retirement allowance cannot be more than the service retirement allowance would be if the member were to continue in employment and retire at age 60. If the regular disability retirement allowance is greater than the improved disability allowance, CalPERS will pay the greater amount. This section shall apply only to members who retire for disability on and after the date the agency elects to be subject to this section.

VI. Credit Unused Sick Leave to Service Credit Section 20965

Unused accumulated sick leave at time of retirement may be converted to additional service credit at the rate of 0.004 year of service credit for each day of unused sick leave (i.e., 250 days of sick leave equals one additional year of service credit).

The City of San Jose will report only those days of unused sick leave that were accrued by the member during the normal course of employment. Additional days of unused sick leave reported for the purpose of increasing the member's retirement benefit are prohibited. This benefit will not increase the maximum percentage allowable.

VII. Employees Sharing Cost of Additional Benefits Section 20516

San Jose Police Officers and San Jose Firefighters eligible for this benefit shall contribute an additional 1.0% toward retirement contribution to lower the cost of the City's pension payments. This additional 1.0% shall be credited to each member's normal cost, for a maximum of 10.0% employee contribution towards pension normal cost.

This benefit allows a contracting agency or an agency that initially contracts with CalPERS to share the cost of additional retirement benefits with the employees as a result of a written agreement with the employee group.

No additional valuation is required if one has already been done for the additional retirement benefits whose cost is to be shared. The employer's rate will simply be reduced by the agreed upon percentage cost sharing.

There are two methods of requesting an actuarial study:

1. If the agreement with the employees specifies a definite percentage increase in the employee rate, such as 1.0%, 2.0%, etc., the valuation can be done on that basis.
2. If the agreement with the employee group is indefinite, the agency may wish to request several valuations, with the employees paying 0.5%, 1.0%, 1.5%, etc.

There are several points to be emphasized:

1. This provision requires that the employer and the employees agree in writing to share the cost of the applicable benefits.
2. The increase in the member contribution rate will be effective as of the effective date of the amendment to the contract. To reduce the percentage the employees have agreed to cost share at a later date, the agency will need to request an amendment to the contract.
3. The increased member contributions will be credited to each member's account as normal contributions and will be included in the refund of accumulated contributions to members who separate from CalPERS covered employment and elect to withdraw their contributions.
4. Some of the optional benefits available, such as 1959 Survivor Benefits and Post- Retirement Survivor Allowance, may not be applicable to all employees. However, if the agency includes such benefits in conjunction with Section 20516, the contribution rate would increase for all employees in the applicable member group.
5. It is also possible to share the cost of formulas other than the minimum formulas, which are the 2% @ 60 for local miscellaneous and the 2% @ 55 for local safety members.

Section 20516 also permits an employer to make an independent agreement with its employees to share the cost of any optional benefit without requiring an amendment to the contract. Any such agreement in a memorandum of understanding, which is inconsistent with this section, shall not be a part of the contract between the agency and this system.

VIII. Military Service Credit 21024

(a) "Public service" with respect to a local member, other than a school member, also means active service with the Armed Forces or the Merchant Marine of the United States, including time during any period of rehabilitation afforded by the United States government other than a period of rehabilitation for purely educational purposes, and for six months thereafter prior to the member's first employment by the employer under this section in which he or she was a member.
(b) Any member electing to receive credit for that public service shall make the contributions as specified in Sections 21050 and 21052. However, any eligible member who requests costing of service credit between January 1, 2001, and December 31, 2003, may, instead of making those contributions, make the payment calculated under this article as it read on December 31, 2000, which payment shall be made in the manner described in Section 21050.
(c) The public service under this section shall not include military service (1) in any period for which credit is otherwise given under this article or Article 4 (commencing with Section 20990) or (2) to the extent that total credit under this section would exceed four years.
(d) Notwithstanding Section 21034, a member may select which of two or more periods of service entitles him or her to receive public service under this section.
(e) This section shall apply to a member only if he or she elects to receive credit while he or she is in state service in the employment of one employer on or after the date of the employer's election to be subject to this section.
(f) This section shall not apply to any contracting agency nor to the employees of any contracting agency until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or in the case of contracts made after this section takes effect, by express provision in the contract making the contracting agency subject to this section. The amendments to this section made during the second year of the 1999-2000 Regular Session shall apply to contracts subject to this section on January 1, 2001.

IX. Fourth Level of 1959 Survivor Benefits Section 21574

This benefit provides a higher level of 1959 Survivor Benefits to survivors of a member who dies prior to retirement. The benefit is paid in addition to the Basic Death Benefit, the 1957 Survivor Benefit, or, if applicable, the Pre-Retirement Optional Settlement 2 Death Benefit but would be reduced by the amount of the Special Death Benefit, if payable. Concurrent coverage under this section and Social Security is prohibited, but an agency may provide the benefit for the full formula members of a divided miscellaneous member group. For agencies first contracting for the 1959 Survivor Program, members in employment prior to the effective date of the amendment may elect not to be covered, however, participation is required for all future hires that are not covered under Social Security (Section 21577).

A spouse or domestic partner is eligible if he or she (1) has care of eligible children, or (2) is age 60 or older. Children are eligible if under age 22 and unmarried or disabled regardless of age.

The monthly allowance payable to eligible survivors under this section is as follows:

Spouse or domestic partner with two or more eligible children;
or three or more eligible children only $2,280

Spouse or domestic partner with one eligible child; or two eligible children only ... $1,900
One eligible child only; or surviving spouse or domestic partner at age 60 or older;

or dependent parents $950

The normal cost for public agencies contracting or amending to provide the Fourth Level will be calculated based on the term insurance funding method. This rate will be calculated on the pool experience rather than individual employer experience. The actual employer cost for agencies currently providing 1959 Survivor Benefits who amend to provide the Fourth Level will vary depending upon each agency's 1959 Survivor funding level.

If there is a deficit in the agency's 1959 Survivor funding (an unfunded accrued liability) based on the Fourth Level benefit, this unfunded liability and the five years of employer normal costs shall be amortized and paid for over a period of five years, the first payment billed in June and due in July following the effective date of the amendment and the remaining four payments due by July 15, of each following year. If there is a surplus in the agency's 1959 Survivor funding, the surplus shall be amortized and used to offset the five years of employer normal costs.

At the end of the first five years, employers in the Fourth Level pool will pay only the pool's net premium.

An operative date for this benefit is established at the time of amendment.

X. Alternate Death Benefit for Local Fire Members Credited with 20 or More Years of Service Section 21547.7

The surviving spouse, domestic partner or eligible children of a deceased firefighter member, who is credited with 20 or more years of CalPERS covered service and whose death occurs while in the employ of a local agency contracting for this benefit, may elect to receive the Alternate Death Benefit in lieu of the lump sum Basic Death Benefit or the 1957 Survivor Benefit. If the member had not attained minimum retirement age at the time of death, the Alternate Death Benefit is calculated based on the member's total service credit with all employers (including the service credit earned while in the employ of the agency contracting for this benefit) as though the member had retired at age 50 and elected Option 2W. Option 2W provides the highest monthly allowance to a beneficiary.

If the member had attained minimum retirement age at the time of death, the benefit is calculated as though the member retired on the date of death (from the employing agency and all previous CalPERS covered employers) and elected Option 2W. If the deceased firefighter had not attained the minimum retirement age at death and had service credit with previous CalPERS agencies, the cost of the Alternate Death Benefit will be the liability of the employing agency, except for a partial offset of costs resulting from a transfer of the member's contributions from all previous employers to the employing agency. The increase in liability not offset by this transfer will be paid by the agency contracting for this benefit and employing the member on the date of his/her death. If the deceased firefighter had attained minimum retirement age at death, the increased cost of the benefit (regardless of whether the member has service credit with another CalPERS employer) is the liability of the agency contracting for this benefit and employing the member on the date of his/her death.

XI. Supplemental Retiree Benefit Reserve

The Supplemental Retiree Benefit Reserve (SRBR) will be closed to all participatory members in the TIER III retirement plan.

XII. Retiree Health Care

An eligible full time employee who is hired on or after July 1, 2012, shall be eligible to receive 50% of the contribution towards the lowest cost premium for a non-deductible medical insurance plan, single coverage. Provided if the employee meets the following criteria:

1. Has completed at least twenty (20) years of retirement service credit in the CalPERS retirement plan.

XIII. Disability Retirees Health Care

An eligible full time employee who is hired on or after July 1, 2012, and is granted a service connected disability retirement shall be eligible to receive 50% of the contribution towards the lowest cost single non - deductible medical insurance plan regardless of years of service.

XIV. Non-Duplication of Benefits

A retiree may not be simultaneously covered by City sponsored plan-provided medical benefits as a retiree, and as a dependent of another City retiree or City employee.

XV. Retiree Dental Insurance

An eligible full time employee who is hired on or after July 1, 2012, shall be eligible to receive 50% of the contribution towards the lowest cost single non - deductible dental insurance plan. Provided if the employee meets the following criteria:

1. Has completed at least twenty (20) years of retirement service credit in the CalPERS retirement plan.

An eligible full time employee who is hired on or after July 1, 2012, and is granted a service connected disability retirement shall be eligible to receive 50% of the contribution towards a single non-deductible dental insurance plan regardless of years of service.

XVI. Surviving Dependants - Employee killed in the line of duty

Surviving dependents of an employee killed in the line of duty shall be eligible to receive 50% of the contribution towards the lowest cost single non - deductible medical and dental insurance plan.

XVII. Retiree Health Care Pre-Funding

The City and the Union agree to continue to pre-fund the fire and police retiree medical and dental healthcare benefits as described in both of the current the SJPOA and IAFF Local 230 memorandum of agreements.

TIER II: VOLUNTARY RETIREMENT BENEFITS ELECTION FOR CURRENT EMPLOYEES

On or before March 1, 2012 active employees shall make a voluntary irrevocable decision to have CalPERS administer their pension benefits beginning July 1, 2012. Any employee hired between March 1, 2012 and June 30, 2012 shall have TIER II pension benefits.

I. Pension Formula 3.0% @ 55 For Local Safety Members Section 21363.1

This formula provides to local safety members 3% of pay at age 55 for each year of service credited with that employer. For members who retire earlier, the percentage of pay is reduced to 2.400% at age 50, which gradually increases for each attained age to 3% at age 55+. Local safety members subject to the 3% @ 55 Full or Supplemental formulas contribute 9% of reportable earnings. Those covered under the 3% @ 55 Modified formula (coordinated with Social Security) contribute 9% of reportable earnings in excess of $133.33. (A formula change affecting the members' contribution rate requires an election of the affected members.)

Local safety members who retire after the effective date of the contract amendment will be subject to this formula. The total allowance for service retirement under the 3% @ 55 formula cannot exceed 90% of final compensation.

II. Cost of Living Allowance - COLA Section 21335

Allowances for retired members of the TIER II retirement plan shall be an annual 3.0% maximum cost-of-living increase provided the Consumer Price Index (CPI) factor increases at least 3.0%.

III. Final Average Salary

The period for determining the average monthly pay rate when calculating retirement benefits will be from the highest paid consecutive 36 months.

IV. Post Retirement Survivor Allowance: Sections 21624, 21626, and 21628

Upon the death of a member after retirement, an allowance shall be continued to the surviving spouse or domestic partner. A "surviving spouse or domestic partner" means for service retirements subject to this section, a husband or wife who was married to or a domestic partner who was registered as a domestic partner with the member at least one year prior to the member's retirement and continuously to the date of the retired member's death and for disability retirements subject to this section, a husband or wife who was married to or a domestic partner who was registered as a domestic partner with the member on the date of his or her retirement and continuously to the date of his or her death.

If there is no surviving spouse or domestic partner, or if the spouse or domestic partner later dies, the allowance shall be continued to the eligible unmarried children collectively until all have reached age 18. Eligible children include disabled children over age 18 if the disability begins prior to age 18. If there is no surviving spouse or domestic partner or eligible child or children, the benefit would be paid to the surviving parent or parents of the deceased member who were dependent upon the member for support. If, at effective date of retirement, the member has no surviving spouse, domestic partner, eligible children, or dependent parents and elected an optional settlement, no allowance under this section shall be paid.

The allowance payable to the survivor(s) of a member who retires after the employer includes Sections 21624, 21626 and 21628 in its contract is determined as follows:

a. One-quarter of the retired member's unmodified allowance based on service subject to the modification for Social Security; or
b. One-half of the retired member's unmodified allowance based on service not subject to the modification for Social Security.

In accordance with Section 21628, the allowance payable to a retired member who chose Option 2, 3, or 4, or the beneficiary of such retirees shall be increased by 15%. For retirees who chose the Unmodified Allowance or Option 1, there is no increase in the retirement allowance but their eligible survivor(s) would receive the post-retirement survivor allowance upon the retired member's death.

Sections 21624, 21626 and 21628, all together, are applicable, by amendment, to contracting agencies. Sections 21624 and 21626 only are available to new contracting public agencies.

V. Improved Nonindustrial Disability Allowance for Local Safety Members Section 21427

The disability retirement allowance of a local miscellaneous and local safety member would be raised to 30% of final compensation for the first five years of service credit, plus 1% for each additional year of service to a maximum of 50% of final compensation.

If the member is under age 60, the disability retirement allowance cannot be more than the service retirement allowance would be if the member were to continue in employment and retire at age 60. If the regular disability retirement allowance is greater than the improved disability allowance, CalPERS will pay the greater amount. This section shall apply only to members who retire for disability on and after the date the agency elects to be subject to this section.

VI. Eliminate Sick Leave Payoff

Provisions for sick leave payoff shall be eliminated in SJPOA and IAFF Local 230 Memorandums of Agreements.

VII. Credit Unused Sick Leave to Service Credit Section 20965

In exchange for eliminating Sick Leave Payoff the following Credit for Unused Sick Leave Service Credit Provisions shall apply for up to 1 year of all unused sick leave hours. Either (two-thousand eighty) 2,080 hours for 40 hour per week employee or 2,912 (two-thousand nine hundred twelve) hours for 56 hour per week employee. Sick leave hours may be accrued beyond 1 year of service time either (two-thousand eighty) 2,080 hours for 40 hour per week employee or 2,912 (two-thousand nine hundred twelve) hours for 56 hour per week employee but will be forfeited upon retirement.

Unused accumulated sick leave at time of retirement may be converted to additional service credit at the rate of 0.004 year of service credit for each day of unused sick leave (i.e., 250 days of sick leave equals one additional year of service credit).

The City of San Jose will report only those days of unused sick leave that were accrued by the member during the normal course of employment. Additional days of unused sick leave reported for the purpose of increasing the member's retirement benefit are prohibited. This benefit will not increase the maximum percentage allowable.

- With respect to this Fire/POA sick leave proposal, if any law is enacted (via legislation, ballot proposition, or the like) that negatively affects (from a financial perspective) the conversion of sick leave to service credit under this proposal, then the sick leave elements of this proposal will be nullified and the parties will return to the status quo as it existed on September 15, 2011 (i.e., with the City invoking its right to meet and confer with both Fire and POA about the sick leave cash out).

VIII. Employees Sharing Cost of Additional Benefits Section 20516

San Jose Police Officers and San Jose Firefighters eligible for this benefit shall contribute 1% additional retirement contribution to the cost of pension payments. A max of 10% of employee contributions towards pension.

This benefit allows a contracting agency or an agency that initially contracts with CalPERS to share the cost of additional retirement benefits with the employees as a result of a written agreement with the employee group.

No additional valuation is required if one has already been done for the additional retirement benefits whose cost is to be shared. The employer's rate will simply be reduced by the agreed upon percentage cost sharing.

There are two methods of requesting an actuarial study:

1. If the agreement with the employees specifies a definite percentage increase in the employee rate, such as 1.0%, 2.0%, etc., the valuation can be done on that basis.
2. If the agreement with the employee group is indefinite, the agency may wish to request several valuations, with the employees paying 0.5%, 1.0%, 1.5%, etc.

There are several points to be emphasized:

1. This provision requires that the employer and the employees agree in writing to share the cost of the applicable benefits.
2. The increase in the member contribution rate will be effective as of the effective date of the amendment to the contract. To reduce the percentage the employees have agreed to cost share at a later date, the agency will need to request an amendment to the contract.
3. The increased member contributions will be credited to each member's

account as normal contributions and will be included in the refund of accumulated contributions to members who separate from CalPERS covered employment and elect to withdraw their contributions.

4. Some of the optional benefits available, such as 1959 Survivor Benefits and Post- Retirement Survivor Allowance, may not be applicable to all employees. However, if the agency includes such benefits in conjunction with Section 20516, the contribution rate would increase for all employees in the applicable member group.
5. It is also possible to share the cost of formulas other than the minimum formulas, which are the 2% @ 60 for local miscellaneous and the 2% @ 55 for local safety members.

Section 20516 also permits an employer to make an independent agreement with its employees to share the cost of any optional benefit without requiring an amendment to the contract. Any such agreement in a memorandum of understanding, which is inconsistent with this section, shall not be a part of the contract between the agency and this system.

XI. Military Service Credit Section 21024

(a) "Public service" with respect to a local member, other than a school member, also means active service with the Armed Forces or the Merchant Marine of the United States, including time during any period of rehabilitation afforded by the United States government other than a period of rehabilitation for purely educational purposes, and for six months thereafter prior to the member's first employment by the employer under this section in which he or she was a member.
(b) Any member electing to receive credit for that public service shall make the contributions as specified in Sections 21050 and 21052. However, any eligible member who requests costing of service credit between January 1, 2001, and December 31, 2003, may, instead of making those contributions, make the payment calculated under this article as it read on December 31, 2000, which payment shall be made in the manner described in Section 21050.
(c) The public service under this section shall not include military service (1) in any period for which credit is otherwise given under this article or Article 4 (commencing with Section 20990) or (2) to the extent that total credit under this section would exceed four years.
(d) Notwithstanding Section 21034, a member may select which of two or more periods of service entitles him or her to receive public service under this section.
(e) This section shall apply to a member only if he or she elects to receive credit while he or she is in state service in the employment of one employer on or after the date of the employer's election to be subject to this section.
(f) This section shall not apply to any contracting agency nor to the employees of any contracting agency until the agency elects to be subject to this section by amendment to its contract made in the manner prescribed for approval of contracts or in the case of contracts made after this section takes effect, by express provision in the contract making the contracting agency subject to this section. The amendments to this section made during the second year of the 1999–2000 Regular Session shall apply to contracts subject to this section on January 1, 2001.

X. Fourth Level of 1959 Survivor Benefits Section 21574

This benefit provides a higher level of 1959 Survivor Benefits to survivors of a member who dies prior to retirement. The benefit is paid in addition to the Basic Death Benefit, the 1957 Survivor Benefit, or, if applicable, the Pre-Retirement Optional Settlement 2 Death Benefit but would be reduced by the amount of the Special Death Benefit, if payable. Concurrent coverage under this section and Social Security is prohibited, but an agency may provide the benefit for the full formula members of a divided miscellaneous member group. For agencies first contracting for the 1959 Survivor Program, members in employment prior to the effective date of the amendment may elect not to be covered, however, participation is required for all future hires that are not covered under Social Security (Section 21577).

A spouse or domestic partner is eligible if he or she (1) has care of eligible children, or (2) is age 60 or older. Children are eligible if under age 22 and unmarried or disabled regardless of age.

The monthly allowance payable to eligible survivors under this section is as follows:

Spouse or domestic partner with two or more eligible children;
or three or more eligible children only $2,280

Spouse or domestic partner with one eligible child; or two eligible children only ... $1,900
One eligible child only; or surviving spouse or domestic partner at age 60 or older;

or dependent parents $950

The normal cost for public agencies contracting or amending to provide the Fourth Level will be calculated based on the term insurance funding method. This rate will be calculated on the pool experience rather than individual employer experience. The actual employer cost for agencies currently providing 1959 Survivor Benefits who amend to provide the Fourth Level will vary depending upon each agency's 1959 Survivor funding level.

If there is a deficit in the agency's 1959 Survivor funding (an unfunded accrued liability) based on the Fourth Level benefit, this unfunded liability and the five years of employer normal costs shall be amortized and paid for over a period of five years, the first payment billed in June and due in July following the effective date of the amendment and the remaining four payments due by July 15, of each following year. If there is a surplus in the agency's 1959 Survivor funding, the surplus shall be amortized and used to offset the five years of employer normal costs.

At the end of the first five years, employers in the Fourth Level pool will pay only the pool's net premium.

An operative date for this benefit is established at the time of amendment.

XI. Alternate Death Benefit for Local Fire Members Credited with 20 or More Years of Service Section 21547.7

The surviving spouse, domestic partner or eligible children of a deceased firefighter member, who is credited with 20 or more years of CalPERS covered service and whose death occurs while in the employ of a local agency contracting for this benefit, may elect to receive the Alternate Death Benefit in lieu of the lump sum Basic Death Benefit or the 1957 Survivor Benefit. If the member had not attained minimum retirement age at the time of death, the Alternate Death Benefit is calculated based on the member's total service credit with all employers (including the service credit earned while in the employ of the agency contracting for this benefit) as though the member had retired at age 50 and elected Option 2W. Option 2W provides the highest monthly allowance to a beneficiary.

If the member had attained minimum retirement age at the time of death, the benefit is calculated as though the member retired on the date of death (from the employing agency and all previous CalPERS covered employers) and elected Option 2W. If the deceased firefighter had not attained the minimum retirement age at death and had service credit with previous CalPERS agencies, the cost of the Alternate Death Benefit will be the liability of the employing agency, except for a partial offset of costs resulting from a transfer of the member's contributions from all previous employers to the employing agency. The increase in liability not offset by this transfer will be paid by the agency contracting for this benefit and employing the member on the date of his/her death. If the deceased firefighter had attained minimum retirement age at death, the increased cost of the benefit (regardless of whether the member has service credit with another CalPERS employer) is the liability of the agency contracting for this benefit and employing the member on the date of his/her death.

XII. Supplemental Retiree Benefit Reserve

The Supplemental Retiree Benefit Reserve (SRBR) will be closed to all participatory members in the TIER II retirement plan. All members who voluntarily irrevocably move into the TIER II retirement plan shall forfeit all rights to any future SRBR earnings and or payments.

XIII. Retiree Health and Dental Care

All TIER II participants shall receive all Retiree Health and Dental Insurance benefits as TIER I members.

XIV. Retiree Health Care Pre-Funding

The City and the Union agree to continue to pre-fund the fire and police retiree medical and dental healthcare benefits as described in both of the current the SJPOA and IAFF Local 230 memorandum of agreements.

XV. Non-Duplication of Benefits

A retiree may not be simultaneously covered by City sponsored plan-provided medical benefits as a retiree, and as a dependent of another City retiree or City employee.

TIER I: RETIREMENT BENEFITS FOR CURRENT EMPLOYEES

Current Retirement Benefits in effect for both SJPOA and IAFF Local 230 members respectively shall remain status-quo but for the following provision changes.

I. Eliminate Sick Leave Payoff

Provisions for sick leave payoff shall be eliminated in SJPOA and IAFF Local 230 Memorandums of Agreements.

II. Credit Unused Sick Leave to Service Credit Section 20965

In exchange for eliminating Sick Leave Payoff the following Credit for Unused Sick Leave Service Credit Provisions shall apply for up to 1 year of all unused sick leave hours. Either (two-thousand eighty) 2,080 hours for 40 hour per week employee or 2,912 (two-thousand nine hundred twelve) hours for 56 hour per week employee. Sick leave hours may be accrued beyond 1 year of service time either (two-thousand eighty) 2,080 hours for 40 hour per week employee or 2,912 (two-thousand nine hundred twelve) hours for 56 hour per week employee but will be forfeited upon retirement.

Unused accumulated sick leave at time of retirement may be converted to additional service credit at the rate of 0.004 year of service credit for each day of unused sick leave (i.e., 250 days of sick leave equals one additional year of service credit).

The City of San Jose will report to Retirement Services only those days of unused sick leave that were accrued by the member during the normal course of employment. Additional days of unused sick leave reported for the purpose of increasing the member's retirement benefit are prohibited. This benefit will not increase the maximum percentage of retirement allowable.

The City of San Jose shall direct retirement services to perform and add into the valuation the value of this benefit. The City of San Jose shall be 100% responsible for the normal cost determined by this valuation. Estimated impact on normal cost to be 0.1%-0.2% of payroll for both groups.

III. Supplemental Retiree Benefit Reserve

Exchange SRBR on Tier I employees and retirees who will have vested rights for a Guaranteed Purchasing Power (GPP) plan; permit the fund to re-capture SRBR funds to be applied against the UAAL.

Both the City and Unions' will support and make a request to the Police and Fire retirement board to perform a "NEW" valuation that takes into account the SRBR / GPP changes, and to implement adjusted contribution rates accordingly.

IV. Retiree Health Care Pre-Funding

The City and the Union agree to continue to prefund the fire and police retiree medical and dental healthcare benefits as described in both of the current the SJPOA and IAFF Local 230 memorandum of agreements.

V. Non-Duplication of Benefits

A retiree may not be simultaneously covered by City sponsored plan-provided medical benefits as a retiree, and as a dependent of another City retiree or City employee.

ALL TIERS:

I. Workers Compensation Reform

THE LABOR-MANAGEMENT WORKERS' COMPENSATION SUPPLEMENTAL DISPUTE RESOLUTION AGREEMENT "LONG BEACH MODEL" SHALL APPLY TO ALL THREE (3) TIERS. TIER I, TIER II, AND TIER III EMPLOYEES.

This Agreement is pursued pursuant to California Labor Code Section 3201.7(a)(3)(c). Nothing in this agreement diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, or medical treatment fully paid by the employer as otherwise provided in Division 4 of the Labor Code. Nothing in this agreement denies to any employee the right to representation by counsel at all stages during the alternative dispute resolution process.

Purpose.

The purposes of this proposal are:

1. To provide active employees claiming compensable injuries under Division 4 of the California Labor Code ("Workers' Compensation Law") with an expedited procedure to resolve medical disputes in accordance with Article IV, Section D of this Agreement to facilitate their prompt return to work;

2. To provide retirees claiming a presumptive injury as defined by California Labor Code (hereinafter "Labor Code") section 3212 et seq. with an expedited procedure to resolve medical disputes in accordance with Article IV, Section D of this Agreement:

3. To reduce the number and severity of disputes between the City and covered employees, when those disputes relate to workers' compensation; and

4. To provide workers' compensation coverage in a way that improves labor management relations, improves organizational effectiveness, and reduces costs to the City.

These purposes will be achieved by utilizing an exclusive list of medical providers to be the sole and exclusive source of medical evaluations for disputed issues surrounding covered employees in accordance with California Labor Code Section 3201.7(c).

The Unions renew its proposal for all three Tiers of employees.

- Tier III employees will not be a participant or recipient of SRBR.
- Tier II employees will forfeit SRBR payments and participation upon voluntarily electing into Tier II. Furthermore, as additional savings, the assets forfeited by Tier II employees shall be rolled into the retiree medical plan to offset unfunded liabilities.
- Tier I employees will be subject to the outcome of bargaining between the City and Unions.

**SAN JOSE POLICE OFFICERS ASSOCIATION
AND SAN JOSE FIREFIGHTERS, IAFF LOCAL 230
RETIREMENT REFORM PROPOSAL
AMENDMENTS (2)
November 1, 2011**

Tier III (New Hires)	Tier II (Actives)	Tier I (Actives)
2% @ 50 years (CalPERS)	3% @ 55 years (CalPERS)	No Change (SJ P&F Plan)
3 Year Average Salary	3 Year Average Salary	No Change
Eliminate Sick Leave Payout	Eliminate Sick Leave Payout	Eliminate Sick Leave Payout
Sick Leave Conversion	Sick Leave Conversion	Sick Leave Conversion
4th Level Survivor Death Benefit (Spouse & Children)	4th Level Survivor Death Benefit (Spouse & Children)	No Change
Post Retirement Survivor Allowance	Post Retirement Survivor Allowance	No Change
CPI with 2% max COLA	CPI with 3% max COLA	No Change
SJ Health and Dental Plan for Employee Only (50%)	SJ Health and Dental Plan (No Change)	No Change
"Long Beach" Worker's Compensation Dispute Resolution Process	"Long Beach" Worker's Compensation Dispute Resolution Process	"Long Beach" Worker's Compensation Dispute Resolution Process
No SRBR	Eliminate SRBR	SRBR converted to GPP
10% Employee Normal Cost Sharing	10% Employee Normal Cost Sharing	No Change; Additional 5% employee cost-share Fiscal 2012-13
Retiree Healthcare Pre-funding	Retiree Healthcare Pre-funding	Retiree Healthcare Pre-funding

November 11, 2011

Robert Sapien, Jr.
President
San Jose Firefighters, IAFF Local 230

George Beattie
President
San Jose Police Officers Association

San Jose Police Officers and Fire Fighters

SAN JOSE FIRE FIGHTERS LOCAL 230

1151 No. Fourth St.
San Jose, CA 95112
Phone #(408) 298-1133

425 E. Santa Clara St.
Suite 300
San Jose, CA 95113
Phone #(408) 286-8718

SAN JOSE POLICE OFFICERS ASSOCIATION
AND SAN JOSE FIREFIGHTERS, IAFF LOCAL 230
RETIREMENT REFORM PROPOSAL
ADDENDUM

1. From July 1, 2012 to June 30, 2013, payments from employees represented by San Jose Police Officers Association (SJPOA) and San Jose Fire Fighters, IAFF Local 230 (SJFF) to Retirement Healthcare prefunding are set forth in Table 1 below. We propose that these payments be suspended.
2. Instead, in fiscal year 2012-2013, employees will increase contributions to the pension fund by 5% to offset City costs. *
3. This resulting City savings for fiscal year 2012-2013 will be applied to each respective department's budgets in order to preserve critical life safety services.
4. After June 30, 2013, employee contributions to Retirement Healthcare will resume and increase as indicated in Table 2 below:

Table 1: SJFF MOA Article 29 - SJPOA MOA Article 50

Current Schedule	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Police	1%	1.98%	3.23%	4.48%	5.73%	TBN
Fire			1.25%	2.5%	3.75%	5%

Table 2: One year contribution diversion from retirement healthcare prefunding with increased employee contribution for preservation of vital public safety services in FY 1012-13.

Proposed Schedule	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Police	1%	1.98%	3.23%	5%*	5.73%	TBN
Fire	--	--	1.25%	5%*	5%	5%

From July 1, 2012 to 2013, the City may suspend contributions to Retiree Healthcare and apply savings proportionately to Police and Fire Department budgets. Payments in the following year (2013-14) will resume at a rate not greater 1.35% higher than the previous scheduled year rate.

Service Impacts; This proposal is estimated to provide 3.5 million dollars for the Fire Department and 5.8 million dollars for the Police Department. This is 9.3

million dollars available in employee contributions to preserve vital public safety services.

This addendum to the attached proposal will expire on November 17, 2011.

November 11, 2011

Robert Sapien, Jr., President
San Jose Firefighters, IAFF Local 230

George Beattie, President
San Jose Police Officers Association

EXHIBIT 11

425 E. Santa Clara St., #300
San Jose, CA 95113
(408) 286-8718
(408) 286-2577 fax

SAN JOSE
FIRE FIGHTERS & POLICE OFFICERS

1151 N. Fourth Street
San Jose, CA 95112
(408) 298-1133
(408) 298-3151 fax

November 18, 2011

VIA EMAIL AND REGULAR MAIL

Alex Gurza
Deputy City Manager
City of San Jose
200 E Santa Clara St
San Jose, CA 95113

Re: Revised POA/Fire Fighter Proposal

Dear Mr. Gurza:

Please consider this a revised proposal by the San Jose Fire Fighters, IAFF Local 230 (Fire) and the San Jose Police Officers' Association (POA).

In recent days, our organizations have been advised of the City's opposition to a move to the California Public Employees Retirement System (CalPERS), an inherent feature of the Fire/POA proposal. We also understand that the City has an absolute demand that any retirement agreement must go before the voters.

Accordingly, and in the interest of continuing to try to find a collaborative resolution to the City's pension cost difficulties, we request that the City direct its negotiators to return to the bargaining table to discuss:

1. Trying to agree on the details of a proposal that would incorporate the savings and the features of our CalPERS proposal, but which would be designed to keep employees in the San Jose Police and Fire Retirement System. That is, let us try to agree on a three-tier model that achieves the savings we propose, but which keeps us, as is the City's express wish, in the City's retirement system. No one would go to CalPERS under our proposal.

2. A joint City/Fire/POA proposed Charter amendment that would seek to have the voters ratify and enshrine in the City Charter the agreement we hope can be achieved under paragraph 1 above.

This proposal represents a fundamental shift in the unions' position. We are dropping our proposal to move to CalPERS in order to satisfy what we understand is a philosophical demand of the City.

Furthermore, this revised proposal retains all of the other features of our prior proposal, most importantly: (1) The agreement by the POA to continue its 10% total compensation concession through June 30, 2013 and ongoing thereafter until revised by subsequent agreement by the parties; and (2) an additional 5% saving, based upon a transfer of healthcare costs, and an additional contribution from both police and fire.

This proposal contemplates a 75% cap under the third tier to be agreed upon for new employees.

We believe that the recent mediation between the parties, concluded Wednesday, was a worthwhile endeavor that triggered the type of frank and collaborative discussions that the formal bargaining process lacked. We believe that there was positive movement by both sides in that process that gives us significant hope that an agreement can be reached by returning to the bargaining table.

Very truly yours,

SAN JOSE FIRE FIGHTERS, IAFF LOCAL 230

Robert Sapien, Jr., President

And

SAN JOSE POLICE OFFICERS' ASSOCIATION

George Beattie, President

EXHIBIT 12

November 22, 2011

PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS WHILE PRESERVING ESSENTIAL CITY SERVICES

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: *"The Employee Fair Pay and Sustainable Benefits Act."*

Section 1: FINDINGS

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to continue to increase dramatically in the near future. In addition, the City's costs for other post employment benefits – primarily health benefits – are increasing. To adequately fund these costs, the City would be required to make dramatic cuts to Essential City Services.

These cuts to Essential City Services have already created a service level emergency in the current fiscal year, an emergency that is projected to worsen significantly in Fiscal Year 2012-2013 and beyond. Because the cost of retirement benefits is rising so rapidly, and current economic conditions and legal restrictions severely limit revenue growth, there is no reasonable prospect that further critical reductions in Essential City Services can be avoided. By any measure, projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

November 22, 2011

The voters hereby find that the facts and circumstances constitute an emergency within the meaning of the Meyers-Milias-Brown Act ("MMBA"), Government Code section 3504.5, and pursuant to the City's authority as a charter city under the California Constitution. *E.g.,* Cal. Const., Art XI.

Section 2: INTENT

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

This Act is not intended to grant any vested rights to any post employment benefit. The City expressly retains its authority to amend, change or terminate any retirement or other post employment benefit program provided by the City; provided, however, nothing in the Act shall be construed to require the forfeiture of any contribution made by an employee toward a pension plan benefit.

Section 3. Measure Supersedes All Conflicting Provisions

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, as well as all ordinances, resolutions or other enactments.

The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than June 30, 2012.

Section 4. Reservation of Voter Authority

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. The City Council shall have no authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

Section 5. Reservation of Rights to City Council

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this measure, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and to amend, change or repeal any retirement or other post employment benefit program subject to the terms of this measure.

Section 6. Current Employees

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).

(b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation reduced by sharing 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future.

(c) A Current Employee's share of the cost to amortize pension unfunded liabilities shall be 5% of pensionable pay starting June 24, 2012, and increased by 5% every fiscal year until the employee's proportionate share of the cost reaches 50% of the amortized pension unfunded liabilities, with each employee's share capped at 25% of the employee's pensionable pay.

(d) The starting date for an employee's compensation adjustment under this Section shall be June 24, 2012, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(e) Current Employees' share of the cost to amortize any unfunded liabilities shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(f) The additional retirement contributions shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

Section 7: One Time Voluntary Election Program ("VEP")

The City Council shall adopt a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%)

earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

(b) Pension benefits under the VEP shall be based on the following limitations:

(i) The accrual rate shall be 2.0% of "final compensation", hereinafter defined, per year of service for future years of service only.

(ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.

(iii) The current age of eligibility for service retirement under the existing plan as approved by the City Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

(iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually on July 1 of each year.

(v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.

(vi) "Final compensation" shall mean the average annual pensionable pay of the highest three consecutive years of service.

(vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

(c) The cost sharing for the VEP for current service or current service benefits ("Normal Cost") shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.

November 22, 2011

(d) VEP Survivorship Benefits.

(i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.

(ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.

(e) VEP Disability Retirement Benefits.

(i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

(ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

(iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

Section 8: Future Employees – Limitation on Retirement Benefits – Tier 2

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program – for new employees – shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

(a) The City contributions shall not be less than 6.2% nor greater than 9% of base salary, excluding premiums or other additional compensation. In no event shall the City contribution to such plan exceed 50% of the cost of the Tier 2 plan (both normal cost and unfunded liabilities). The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City

Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, "final compensation" shall mean the average annual pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 1.5% per year of service.

(f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

(g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan shall create a vested right to any benefit.

Section 9: Disability Retirements

(a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

(b) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

(i) An employee cannot do work that they did before; and

(ii) It is determined that

1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or

2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's

department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

(d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a disability retirement but incur long term reductions in compensation as the result of work related injuries.

(e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

Section 10: Emergency Measures to Contain Retiree Cost of Living Adjustments

The City shall adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees from July 1, 2012 until at least January 1, 2018.

After January 1, 2018, the City Council shall restore COLAs prospectively (in whole or in part), if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

(b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1% for employees in Tier 2.

Section 11: Supplemental Payments to Retirees

The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.

Section 12: Retiree Healthcare

(a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

(c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

Section 13: Actuarial Soundness (for both pension and retiree healthcare plans)

(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.

(b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.

(c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:

1) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and

2) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.

(d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:

1) the funding objectives and actuarial assumptions of the plans; and

2) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

Section 14: Savings

(a) In the event Section 7 or 10 (as that Section applies to Current Employees), of this Act is determined to be illegal, invalid or unenforceable as to Current Employees, then the Current Employees' share of the costs to amortize any unfunded liabilities shall be 50% of the plan covering the respective employees.

(b) In the event Section 6 (b) and (c), and/or the employee payment of the unfunded liability referenced in Section 14(a), is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 5% of compensation each year, capped at a maximum of 25% of pay or the equivalent of what would be 50% of the amortized pension unfunded liability.

Section 15: Severability

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.

November 22, 2011

(b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.

EXHIBIT 13

From: Debra Figone
Sent: Tuesday, November 22, 2011 5:28 PM
To: #All City Employees
Subject: Update on Retirement Reform and Fiscal Challenges

Dear City Employee –

I wanted to give you an update on the latest developments regarding the City's fiscal crisis. Earlier today, two documents were released: 1) the *Proposed Retirement Reform Ballot Measure*; and, 2) a report titled: *Fiscal and Service Level Emergency Report: An evaluation of conditions in the City of San José* along with a memorandum recommending that the City Council declare a Fiscal and Service Level Emergency.

I know that you have no doubt heard much about a March ballot measure. The proposal going to the City Council is far different than the earlier versions, so I encourage you to read through this document, as well as the report, which makes clear why this ballot measure and changes to the existing retirement system are necessary. The report is a large one so you may prefer to read the executive summary.

The City is facing a projected $80.5 million deficit in the coming fiscal year. More than 60% of this shortfall is the direct result of increasing retirement costs. With the City experiencing its 11th straight year of budget shortfalls, our options are very limited for closing this budget gap. The City is still able to pay its bills. However, we are trying to avoid a situation in which we would have no other choice but to make severe reductions to a degree that would jeopardize our ability to serve residents. The objectives of the report and ballot measure are to preserve public safety and health as well as a sustainable retirement system for City employees and retirees.

By taking steps now, we can save more jobs, continue providing current City services, and have a sustainable future. On Tuesday, December 6, the City Council will discuss whether to declare a Fiscal and Service Level Emergency as well as place the ballot measure before the voters in March. At that time, the Mayor and Council will provide direction on how to proceed.

Your contributions to the City are especially appreciated during these challenging times. I anticipate there will be more hurdles ahead but we will overcome these financial hurdles together. Thank you for your service to our community.

Debra Figone
City Manager

EXHIBIT 14

SAN JOSE POLICE
OFFICERS' ASSOCIATION
1151 North Fourth Street • San Jose, California 95112
Telephone 408-298-1133 • Facsimile 408-298-3151 • E-Mail@sjpoa.com

December 1, 2011

VIA EMAIL AND REGULAR MAIL

Alex Gurza
Deputy City Manager
City of San Jose
200 E Santa Clara St
San Jose, CA 95113

Re: Revised SJPOA Retirement Proposal

Dear Mr. Gurza:

The SJPOA and Local 230 submitted a revised retirement proposal to the City on November 8, 2011. We proposed a three-tier model to incorporate the savings we had promised under our CalPERS model, but realized under the San Jose Police and Fire Retirement System. Additionally, we agreed to support a joint City-labor ballot proposition implementing our proposal.

Notwithstanding that we have had no response to that proposal or to our request to return to the bargaining table, the SJPOA today proposes to reinstate the retirement plan provision in place prior to 1997 as a second-tier that will be available to active employees who opt to participate in it and to new hires. This proposal should be considered in tandem with the one filed earlier today by our brothers and sisters at Local 230.

Benefit	Tier 1 (Actives)	Tier II (Opt-In and New Hires)
Max Benefit	Status Quo	75%
Accrual Rate	2.5% / 4% per year	2.5% per year
Age/Years of Service	25 years @ age 50 20 years @ age 55 30 years any age	25 years @ age 50 20 years @ age 55 30 years any age
FAS Calculation	12 Months Final Average Salary	36 Months Final Average Salary
COLA	3%	CPI-U 3% with Banking Feature
Normal Cost (8/3 split) (No Need for Charter Change)	Status Quo	Status Quo
Unfunded Liability	Status Quo	Status Quo
SRBR	Convert to GPP*	Convert to GPP*
Sick Leave Payout	Status Quo	Convert to Service Time

Benefit	Tier 1 (Actives)	Tier II (Opt-In and New Hires)
Retiree Health Care Pre-Funding	1 Year Diversion Proposal	1 Year Diversion Proposal
Disability Reform	"Long Beach Model" Worker's Compensation Dispute Resolution Process	"Long Beach Model" Worker's Compensation Dispute Resolution Process
Health Care for Actives	Status Quo	100% LPP Single Coverage for new hires (status quo for actives)

*Guaranteed Purchasing Power (GPP): Transition from SRBR benefit to GPP estimated to save 6 million annually.

We reiterate that a critical element of the proposal remains the SJPOA's proposing to forego proceeding to the pending interest arbitration concerning the duration of the ten-percent wage reduction and the term of the Memorandum of Agreement (recently agreed to by the SJPOA and the City concerning all non-retirement terms and conditions of employment), if the City accepts the unions' joint retirement proposal. In other words, should the City agree to our retirement proposal, the SJPOA will agree that the MOA is of a two-year duration and that the 10% wage reduction does not sunset.

Furthermore, the opt-in contained in the above table would replace the SJPOA-only opt-in plan in the Memorandum of Agreement (recently agreed to by the SJPOA and the City concerning all non-retirement terms and conditions of employment).

We believe this proposal goes a long way towards reducing the City's retirement costs going forward—perhaps the single greatest priority that your bargaining representatives explained to us throughout our summer of bargaining. We think that this proposal has strong "win-win" potential, and we encourage the City to send its negotiators back to the table to try to reach a bilateral accord on how to maximize the number of active employees who opt into Tier II, as described in the table. Additionally, the parties should return to the table to discuss the impact of the significantly reduced City pension obligation for FY 2013 as contained in the Cheiron Report, as adopted today by the Retirement Board.

As challenging as these discussions have been on both sides, we believe that developments in the last 48-hours, and particularly these revised proposals from Police and Fire offer a great opportunity to resolve these issues collaboratively.

Very truly yours,

SAN JOSE POLICE OFFICERS' ASSOCIATION

Jim C. Unland, President

cc: John R. Tennant, General Counsel
Gregg McLean Adam, Esq.

EXHIBIT 15

December 5, 2011

PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS WHILE PRESERVING ESSENTIAL CITY SERVICES

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: *"The Employee Fair Pay and Sustainable Benefits Act."*

Section 1: FINDINGS

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to continue to increase in the near future. In addition, the City's costs for other post employment benefits – primarily health benefits – are increasing. To adequately fund these costs, the City would be required to make additional cuts to Essential City Services.

By any measure, current and projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

December 5, 2011

Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

Section 2: INTENT

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

This Act is not intended to grant any vested rights to any post employment benefit. The City expressly retains its authority to amend, change or terminate any retirement or other post employment benefit program provided by the City; provided, however, nothing in the Act shall be construed to require the forfeiture of any contribution made by an employee toward a pension plan benefit.

Section 3. Measure Supersedes All Conflicting Provisions

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, as well as all ordinances, resolutions or other enactments.

December 5, 2011

The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than June 30, 2012.

Section 4. Reservation of Voter Authority

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. The City Council shall have no authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

Section 5. Reservation of Rights to City Council

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this measure, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and to amend, change or repeal any retirement or other post employment benefit program subject to the terms of this measure.

Section 6. Current Employees

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).

(b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation reduced by sharing 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future.

(c) A Current Employee's share of the cost to amortize pension unfunded liabilities shall be 5% of pensionable pay starting June 24, 2012, and increased by 5% every fiscal year until the employee's proportionate share of the cost reaches 50% of the amortized pension unfunded liabilities, with each employee's share capped at 25% of the employee's pensionable pay.

(d) The starting date for an employee's compensation adjustment under this Section shall be June 24, 2012, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(e) Current Employees' share of the cost to amortize any unfunded liabilities shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(f) The additional retirement contributions shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

December 5, 2011

Section 7: One Time Voluntary Election Program ("VEP")

The City Council shall adopt a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

(b) Pension benefits under the VEP shall be based on the following limitations:

(i) The accrual rate shall be 2.0% of "final compensation", hereinafter defined, per year of service for future years of service only.

(ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.

(iii) The current age of eligibility for service retirement under the existing plan as approved by the City Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

(iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually on July 1 of each year.

(v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.

(vi) "Final compensation" shall mean the average annual pensionable pay of the highest three consecutive years of service.

(vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

(c) The cost sharing for the VEP for current service or current service benefits ("Normal Cost") shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.

(d) VEP Survivorship Benefits.

(i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.

(ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.

(e) VEP Disability Retirement Benefits.

(i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

(ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

(iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

Section 8: Future Employees – Limitation on Retirement Benefits – Tier 2

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program – for new employees – shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

(a) The City contributions shall not be less than 6.2% nor greater than 9% of base salary, excluding premiums or other additional compensation. In no event shall the City contribution to such plan exceed 50% of the cost of the Tier 2 plan (both normal cost and unfunded liabilities). The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, "final compensation" shall mean the average annual pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.

December 5, 2011

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 1.5% per year of service.

(f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

(g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan shall create a vested right to any benefit.

Section 9: Disability Retirements

(a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

December 5, 2011

(b) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

(i) An employee cannot do work that they did before; and

(ii) It is determined that

1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or

2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

(d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a disability retirement but incur long term reductions in compensation as the result of work related injuries.

(e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

Section 10: Emergency Measures to Contain Retiree Cost of Living Adjustments

If the City Council adopts a resolution declaring a fiscal and service level emergency, with a finding that it is necessary to suspend increases in cost of living payments to retirees the City may adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees in whole or in part for up to five years. The City Council shall restore COLAs prospectively (in whole or in part), if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

(b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1% for employees in Tier 2.

December 5, 2011

Section 11: Supplemental Payments to Retirees

The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.

Section 12: Retiree Healthcare

(a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

(c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

Section 13: Actuarial Soundness (for both pension and retiree healthcare plans)

(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.

(b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.

(c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:

1) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and

2) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.

(d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:

1) the funding objectives and actuarial assumptions of the plans; and

2) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

Section 14: Savings

(a) In the event Section 7 or 10 (as that Section applies to Current Employees), of this Act is determined to be illegal, invalid or unenforceable as to Current Employees, then the Current Employees' share of the costs to amortize any unfunded liabilities shall be 50% of the plan covering the respective employees.

(b) In the event Section 6 (b) and (c), and/or the employee payment of the unfunded liability referenced in Section 14(a), is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 5% of compensation each year, capped at a maximum of 25% of pay or the equivalent of what would be 50% of the amortized pension unfunded liability.

Section 15: Severability

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.

(b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.

EXHIBIT 16

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Manager
EMPLOYEE RELATIONS

SENT VIA EMAIL

December 9, 2011

Jim Unland
President
San Jose Police Officers' Association
1151 North Fourth Street
San Jose, CA 95112

Robert Sapien, Jr.
President
San Jose Fire Fighters, IAFF, Local 230
425 E. Santa Clara Street, Suite 300
San Jose, CA 95113

RE: Retirement Reform and Ballot Measure Mediation

Dear Jim and Robert:

As you know, on Tuesday, December 6, 2011, the City Council approved a ballot measure for the June 2012, election that would include various proposed changes to the Charter regarding retirement benefits. As part of the direction, the City Council requested that the City's negotiation team invite all bargaining groups to re-engage in mediation regarding all retirement issues, including the related ballot measure.

When the City and IAFF, Local 230 and the POA commenced negotiations regarding retirement, the parties reached an agreement on a framework to negotiate concurrently on the issues of retirement reform and related ballot measure(s). The agreement included the following provision:

> *The parties agree to meet and confer in good faith and agree to complete the negotiation process by October 31, 2011. If the parties are unable to reach an agreement on retirement reform and/or related ballot measure(s) by October 31, 2011, the parties shall proceed to impasse, pursuant to the procedures outlined in the Employer-Employee Relations Resolution No. 39367. In the event of impasse, the POA and IAFF, Local 230 will participate in the impasse procedures collectively. If the parties proceed to binding interest arbitration, in accordance with the applicable provisions under Charter Section 1111, it is understood that the POA and Local 230 will participate in these proceedings separately. Charter Section 1111 shall not apply to bargaining over ballot measures.*

During the Council meeting, some representatives from your bargaining units expressed an interest in continuing the discussions on retirement reform and related ballot measure. The City would be amenable to continuing the discussions regarding all retirement issues, including the related ballot measure, in mediation. This process would include using the same framework that the parties mutually agreed to use earlier, as described above.

As indicated during the Council meeting, the City Council needs to submit the ballot measure to the County Registrar of Voters 88 days prior to the June election, which would be March 9, 2012. Therefore, it is crucial that we move forward as quickly as possible. Please let us know by Tuesday, December 13, 2011, if you are interested in re-engaging in the mediation regarding retirement reform and related ballot measure collectively, using the framework referenced above.

We look forward to hearing from each of you.

Sincerely,

Alex Gurza
Deputy City Manager

c: Gina Donnelly, Deputy Director of Employee Relations
John Tennant, General Counsel, POA
Gregg McLean Adam, Carroll, Burdick & McDonough LLP
Chris Platten, Legal Counsel, San Jose Fire Fighters, IAFF, Local 230

EXHIBIT 17

SAN JOSE FIRE FIGHTERS LOCAL 230

425 E. Santa Clara St., #300
San Jose, CA 95113
(408) 286-8718
(408) 286-2577 fax

SAN JOSE

FIRE FIGHTERS & POLICE OFFICERS

1151 N. Fourth Street
San Jose, CA 95112
(408) 298-1133
(408) 298-3151 fax

December 13, 2011

VIA EMAIL AND REGULAR MAIL

Alex Gurza
Deputy City Manager
Office of the City Manager, City of San Jose
200 E Santa Clara St
San Jose, CA 95113

Re: Response to the City's Letter of December 9

Dear Alex:

We are in receipt of the City's letter of December 9. In it, the City announces it is "amenable to continuing the discussions regarding all retirement issues, including the related ballot proposition, in mediation." The City also confirms that it has already approved a ballot measure for the June 2012 election.

Illegal City Action

The City Council's vote to approve a ballot measure was illegal. The City did not fulfill its obligation to meet and confer in good faith—a mandatory prerequisite before it could vote to place the ballot proposal on the June ballot.

The bargaining obligation in California, even involving *Seal Beach* negotiations, extends until the parties either reach agreement or impasse. But no agreement was reached with respect to the ballot proposition, nor was impasse declared. Instead, the City simply moved ahead as it had planned, and voted on December 6. Yet the law is clear that where no agreement or impasse exists, a public entity has no right to place a measure on the ballot. (See *Santa Clara County Correctional Peace Officers' Association v. Santa Clara County* (2010) 34 PERC ¶ 97 ["the County breached its duty to meet and confer in good faith when it failed to bargain the Prevailing Wage Measure to agreement or impasse prior to placing it on the ballot"]; *Santa Clara County Registered Nurses Professional Association v. County of Santa Clara* (2010) 34 PERC ¶ 109 ["mere fact that the County thought the inclusion of the measure on the November 2004 ballot was desirable does not constitute a compelling operational necessity sufficient to set aside its bargaining obligation"].[1])

The parties were not at impasse. The Unions are aware of no declaration of impasse by the City. And any effort to retroactively declare impasse is defeated by the reality that further negotiations were required over at least two significant developments:

(1) Subsequent to the November 15-16 mediation, the POA and Local 230 presented two new proposals to the City, dated November 17 and December 2. The first proposal agreed to (a) abandon a proposed move to CalPERS in favor of seeking equivalent savings under the City plan, and (b) work towards giving the citizens ultimate control over pension benefit increases and decreases. The second proposal set forth a 75% plan. Those proposals have not been discussed, let alone bargained over.

(2) The City itself significantly revised its ballot proposition on November 22. (See 11/22/11, 5:28 p.m., email from City Manager Debra Figone to "All City Employees" [describing revised ballot proposition as "proposal going to the City Council is far different than the earlier versions..."].) And the City issued yet another revised ballot proposition on December 5. No negotiations took place over either "far different" revision.

In addition to both sides' voluntary changes in their bargaining position, on December 1, the Police and Fire Retirement Board adopted a report by its actuary, Cheiron, which establishes that the City's police and fire retirement contribution for Fiscal Year 2013 ("FY 13") would be $55 million ***less than*** had been previously projected. Much higher projections for future pension contributions were the underpinnings of both the City's Fiscal Reform Plan and its bargaining position throughout negotiations and mediation. Thus, the parties would return to the table facing a significantly lower target, and one eminently more reachable through negotiations.

Taken individually or in totality, these changes would have broken impasse even if the City had declared it. (It did not.)

But putting aside the question of impasse, we on the side of the Unions believe all of these positive changes present a "shot in the arm" for a bargained solution to the City's pension cost challenges. For example, the City rejected the

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[1] We note that the City's retained outside counsel firm represented the County in both the cited cases.

police/fire CalPERS proposal because it did not want to move to CalPERS. Additionally, the City felt the proposal did not save enough money. As stated above, however, the Unions already abandoned a move to CalPERS, and the Cheiron report establishes that the City does not need to save as much money as it initially estimated. It also shows that the Unions' actuaries' savings estimates, which the City rejected as exaggerated, were even more conservative than Cheiron's projections.

Given all these developments, it was illegal for the City to insist on voting on December 6 for a ballot measure that need not be finalized until March 9.

Resumption of Bargaining

The proper solution is to return to the bargaining table. The revised ballot proposition, the Unions' revised proposals, and the recalibrated financial outlook and projected pension costs present a golden opportunity to try to reach a bilateral agreement. Moreover, we believe that a court or administrative agency would be compelled to order the City to resume bargaining based on this record.

The City's Offer of Mediation is Unconvincing

In what appears to be a throwaway line at the end of the December 9 letter, the City holds the door open on "mediation regarding retirement reform and related ballot measure collectively, using the framework referenced above." But the City is sending a mixed message: on one hand, this offer to mediate seems a half-step in the right direction; on the other, the solidifying of specific ballot measure language three months in advance of the deadline suggests the City has already set its final course, prompting the question: *If the City has already determined the language of the ballot measure, what is left to mediate*?

In any case, bargaining openly and publicly is a superior method of addressing these issues—and it is required by state law, as described above. The City has prided itself on "sunshine"—posting proposals as they are made and keeping the citizens informed of the progress of discussions. Yet now, on perhaps the defining labor relations issue of these times, it seeks to meet "behind closed doors" in a secretive process.

Moreover, the "framework referenced above," as cited in the December 9 letter, has already failed—twice in fact: one with retirement negotiations, and once with the POA's MOA.

A Robust, "Skin in the Game" Mediation Proposal

Although further bargaining is legally mandated, we fear that the City will decline our request to bargain, and instead set up a legal fight. But in an effort to avoid this undesirable scenario, and assuming mediation is the only forum in which the City will reengage with our Unions, we offer the following mediation proposal[2]:

1. The parties will mutually agree to use a high-level, professional mediator, preferably a retired judge. We suggest using a retired judge who has "go to" talent with respect to mediating "bet the company" type cases—someone whose professional reputation depends on his or her ability to persuade disagreeing parties to settle matters of the magnitude of this pension dispute. Our idea is akin to the justification used by the Mayor for Measure V, which requires a retired judge unless the City and the Unions agree otherwise. Heavy-hitter mediators can be costly, but such costs pale in comparison to the astronomical costs to city taxpayers of a legal dispute. Having to invest—put "skin in the game"—will be an enormous impetus on both sides to try to reach a deal.

2. The mediator will be able to retain his or her own financial expert. Some of our dispute has come down to "dueling actuaries." The mediator needs to have the ability, through the use of a retained, neutral financial expert, to bring the parties out from behind the cover of their actuaries.

3. Parameters of mediation. We propose that mediation begin *during the week of January 9, 2012*; that mediation occur weekly; and that it initially *aim to conclude by March 1, 2012*. Either party remains free to withdraw from mediation at any time.

4. Either party can ask the mediator to issue a proposed mediator's solution at the end of the mediation, which shall be advisory only.

[2] But we hereby reserve our right to seek judicial and administrative relief to require the City to resume bargaining and to seek to revoke the illegal action taken on December 6.

The City's desire to re-engage in mediation is not misplaced. But we believe that the above-described proposal, wherein the parties use a mediator whose reputation depends upon the parties potentially reaching agreement, provides our best hope for resolving amicably what has until now been a protracted dispute. It is in that spirit—a hope towards mutual resolution of the parties' differences over retirement issues which meets the needs and interests of both San Jose's citizens and its public safety employees—that we submit this proposal.

Very truly yours,

SAN JOSE FIRE FIGHTERS, IAFF LOCAL 230

Robert Sapien, Jr., President

And

SAN JOSE POLICE OFFICERS' ASSOCIATION

Jim Unland, President

cc: Jonathan Holtzman, Esq.

EXHIBIT 18

Attachment A

February 21, 2012

PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS WHILE PRESERVING ESSENTIAL CITY SERVICES

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: *"The ~~Employee Fair Pay and~~ Sustainable Retirement Benefits and Compensation Act."*

Section 1: FINDINGS

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to continue to increase in the near future. In addition, the City's costs for other post employment benefits – primarily health benefits – are increasing. To adequately fund these costs, the City would be required to make additional cuts to Essential City Services.

By any measure, current and projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

February 21, 2012

Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

Section 2: INTENT

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

February 21, 2012

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

~~This Act is not intended to grant any vested rights to any post employment benefit.~~ The City expressly retains its authority existing as of January 1, 2012, to amend, change or terminate any retirement or other post employment benefit program provided by the City pursuant to Charter Sections 1500 and 1503. ~~; provided, however, nothing in the Act shall be construed to require the forfeiture of any contribution made by an employee toward a pension plan benefit.~~

February 21, 2012

Section 3. ~~Measure~~ Act Supersedes All Conflicting Provisions

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, ~~as well as all~~ ordinances, resolutions ~~or other enactments.~~

The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than ~~June~~ September 30, 2012.

Section 4. Reservation of Voter Authority

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. Neither ~~T~~the City Council, nor any arbitrator appointed pursuant to Charter Section 1111, shall have ~~no~~ authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

Section 5. Reservation of Rights to City Council

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this ~~measure~~Act, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and at any time, or from time to time, to amend or otherwise change any retirement plan or plans or establish new or different plan or plans for all or any officers or employees ~~to amend, change or repeal any retirement or other~~

~~post employment benefit program~~ subject to the terms of this ~~measure~~Act.

Section 6. Current Employees

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).

(b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation ~~reduced~~adjusted ~~by sharing~~ through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.

~~(c) A Current Employee's share of the cost to amortize pension unfunded liabilities shall be 5% of pensionable pay starting June 24, 2012, and increased by 5% every fiscal year until the employee's proportionate share of the cost reaches 50% of the amortized pension unfunded liabilities, with each employee's share capped at 25% of the employee's pensionable pay.~~

(~~d~~c) The starting date for an employee's compensation adjustment under this Section shall be June ~~24~~23, ~~2012~~2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(~~e~~d) The compensation adjustment through additional employee contributions for Current Employees~~'~~ ~~share of the cost to amortize any unfunded liabilities~~ shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(~~f~~e) The ~~additional retirement contributions~~ compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

Section 7: One Time Voluntary Election Program ("VEP")

The City Council shall adopt a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

(b) Pension benefits under the VEP shall be based on the following limitations:

(i) The accrual rate shall be 2.0% of "final compensation", hereinafter defined, per year of service for future years of service only.

(ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.

(iii) The current age of eligibility for service retirement under the existing plan as approved by the City Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

(iv) ~~The eligibility to retire at thirty (30) years of~~ service regardless of age shall increase by 6 months annually on July 1 of each year starting July 1, 2017~~on July 1 of each year~~.

(v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.

(vi) "Final compensation" shall mean the average annual pensionable pay of the highest three consecutive years of service.

(vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

(c) The cost sharing for the VEP for current service or current service benefits ("Normal Cost") shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.

(d) VEP Survivorship Benefits.

(i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.

(ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.

(e) VEP Disability Retirement Benefits.

(i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

(ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

(iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

Section 8: Future Employees – Limitation on Retirement Benefits – Tier 2

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program – for new employees – shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

(a) ~~The City contributions shall not be less than 6.2% nor greater than 9% of base salary, excluding premiums or other additional compensation. In no event shall the City contribution to such plan exceed 50% of the cost of the Tier 2 plan (both normal cost and unfunded liabilities).~~ The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan. If the City provides a defined benefit plan, the City's cost of such plan shall not exceed 50% of the total cost of the Tier 2 defined benefit plan (both normal cost and unfunded liabilities). The City may contribute to a defined contribution or other retirement plan only when and to the extent the total City contribution does not exceed 9%. If the City's share of a Tier 2 defined benefit plan is less than 9%, the

City may, but shall not be required to, contribute the difference to a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, "final compensation" shall mean the average annual earned pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed ~~1.5~~2% per year of service, not to exceed 65% of final compensation.

(f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

(g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan subject to this section shall create a vested right to any benefit.

Section 9: Disability Retirements

(a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

(b) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

(i) An employee cannot do work that they did before; and

(ii) It is determined that

1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or

2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

(d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a disability retirement but incur long term reductions in compensation as the result of work related injuries.

(e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

Section 10: Emergency Measures to Contain Retiree Cost of Living Adjustments

If the City Council adopts a resolution declaring a fiscal and service level emergency, with a finding that it is necessary to suspend increases in cost of living payments to retirees the City may adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees in whole or in part for up to five years. The City Council shall restore COLAs prospectively (in whole or in part), if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

(b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1.5% for employees in Tier 2.

Section 11: Supplemental Payments to Retirees

The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.

Section 12: Retiree Healthcare

(a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

(c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

Section 13: Actuarial Soundness (for both pension and retiree healthcare plans)

(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.

(b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.

(c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:

1) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and

2) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.

(d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:

1) the funding objectives and actuarial assumptions of the plans; and

2) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

Section 14: Savings

~~(a) In the event Section 7 or 10 (as that Section applies to Current Employees), of this Act is determined to be illegal, invalid or unenforceable as to Current Employees, then the Current Employees' share of the costs to amortize any unfunded liabilities shall be 50% of the plan covering the respective employees.~~

~~(b)~~ In the event Section 6 (b) ~~and (c), and/or the employee payment of the unfunded liability referenced in Section 14(a),~~ is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed ~~5~~4% of compensation each year, capped at a maximum of ~~25~~16% of pay ~~or the equivalent of what would be 50% of the amortized pension unfunded liability~~.

Section 15: Severability

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.

(b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.

EXHIBIT 19

COUNCIL AGENDA: 03-06-12
ITEM:

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Debra Figone

SUBJECT: REVISED BALLOT MEASURE

DATE: February 21, 2012

RECOMMENDATION

1. Discussion and consideration of repeal of Resolution No. 76087 and consideration of a revised Retirement Reform ballot measure for a June 5, 2012 election;

2. If Council wishes to proceed, repeal Resolution No. 76087 and adopt a resolution of the Council:

   a) calling for a special municipal election to be held on June 5, 2012, and, on its own motion, giving notice of the submission to the electors of the City of San Jose, of the following measure at that election:

PENSION REFORM

To protect essential services: neighborhood police patrols, fire stations, libraries, community centers, streets and parks, shall the Charter be amended to reform retirement benefits of City employees and retirees by: increasing employees' contributions; establishing a voluntary reduced pension plan for current employees and pension cost and benefit limitations for new employees; reforming disability retirements to prevent abuses; temporarily suspending retiree COLAs during emergency; and requiring voter approval for increases in future pension benefits?

   b) directing the City Clerk to take all other actions previously approved on December 6, 2011, necessary to facilitate the Special Municipal Election.

BACKGROUND

The Mayor's March 2011 Budget Message, that was approved by the City Council, directed the City Manager to develop a Fiscal Reform Plan to save $216 million in General Fund Savings by Fiscal Year 2015-2016, and to reduce retirement costs to the Fiscal Year 2010-2011 level. The Fiscal Reform Plan is available here:
http://www.sanjoseca.gov/budget/FY1112/05MBA/MBA01-FiscalReformPlan.PDF.

At the May 24, 2011, City Council meeting, the City Manager's *Fiscal Reform Plan* was agendized for discussion as item 3.4. For this agenda item, in a memorandum dated May 13, 2011, Mayor Reed, Vice Mayor Nguyen and Councilmembers Herrera and Liccardo, recommended an amendment to the City Charter in order to limit retirement benefits and to require voter approval of increases in retirement benefits. This was approved by the City Council, which directed staff to return with a proposed ballot measure.

To allow time to meet and confer with the City's bargaining units, this item was deferred and, per a memo submitted by the Mayor on November 18, 2011, consideration of the proposed ballot measure was agendized for City Council consideration at the Council meeting on December 6, 2011. On December 6, 2011, the City Council adopted Resolution 76087 and approved a ballot measure (Attachment B) for the June 2012, election, but directed staff not to submit the ballot measure language to the Registrar of Voters to allow time for the City Administration to ask the bargaining units to re-engage in mediation on all retirement issues, including the related ballot measure, in an attempt to reach an agreement on the ballot measure language that would be submitted to the Registrar of Voters.

Timeline

When the direction for a ballot measure was first approved in May 2011, it was intended for consideration for the November 2011 election. However, to give additional time for negotiations with the City's bargaining units, it was postponed until the March 2012 election. On December 6, 2011, the City Council voted again to delay the ballot measure to the June 2012 election.

The City Council must approve putting a ballot measure before the voters 88 days in advance of the election. March 9, 2012, is 88 days prior to the June 2012 election. Although the City Council approved ballot measure language on December 6, 2011, the language was not submitted to the Registrar of Voters to allow additional time for mediation. The final ballot measure language must be submitted to the Registrar of Voters by March 9, 2012.

If the revised ballot measure is not approved by the City Council, absent other action by the City Council, the City Clerk has been directed to submit to the Registrar of Voters the ballot measure approved by the City Council on December 6, 2011.

ANALYSIS

Meet and Confer with the City's Bargaining Units

As was explained in a memo (Attachment C) dated November 22, 2011, for the December 6, 2011 meeting, the meet and confer process over a ballot measure is somewhat different than the traditional meet and confer process and is referred to as "Seal Beach Bargaining." "Seal Beach Bargaining" is a labor term that comes from a court case involving the City of Seal Beach, California, and the Seal Beach Police Officers' Association. It refers to bargaining or negotiating over a proposed ballot measure prior to it being placed on a ballot for consideration by voters during an election. This is only done when a proposed ballot measure affects matters within the scope of representation.

Because the proposed ballot measure affects retirement benefits, the City engaged in "*Seal Beach* Bargaining" with all 11 of its bargaining units, although the level of participation varied by each bargaining unit. In all cases, the City provided advance notice to every bargaining unit and an opportunity to bargain.

Although significant changes were made to the ballot measure based on comments the City received from the bargaining units, no agreement was reached with any bargaining unit during negotiations. Because of this, impasse procedures were invoked. Under the Employer-Employee Relations Resolution 39367, mediation is triggered by a declaration of impasse. The City offered mediation to all bargaining units, even those who had declined or failed to participate in bargaining regarding the ballot measure.

Prior to December 6, 2011, the City and 11 bargaining units engaged in mediation, but those efforts did not result in an agreement. Although the City Council approved moving forward with the ballot measure dated December 5, 2011, for a June 2012 election, they asked that the City negotiators ask the bargaining units to re-engage in mediation in an attempt to reach an agreement.

On December 7, 2011, the City Administration contacted all 11 bargaining units to gauge their interest in re-engaging in mediation in a coalition setting. Although the City asked that the 9 bargaining units that represented employees in the Federated City Employees' Retirement System meet in a coalition setting, they were not interested in doing so.

The following chart represents the coalitions that were formed for mediation and the numerous mediation sessions and meetings that ensued since December 6, 2011.

Federated City Employees' Retirement System		Police and Fire Department Retirement System
Association of Building, Mechanical and Electrical Inspectors	**IFPTE Local 21** **Association of Engineers and Architects**	**San Jose Fire Fighters, IAFF Local 230** **San Jose Police Officers' Association**
Association of Legal Professionals **Confidential Employees' Organization, AFSCME** **Municipal Employees' Federation, AFSCME** **Operating Engineers, Local #3**	**City Association of Management Personnel** **Association of Maintenance Supervisory Personnel**	
Wednesday, December 21st Wednesday, January. 4th Friday, January 6th Friday, January 13th Monday, January 30th Monday, February 13th	Friday, January 6th Monday, January 9th Thursday, January 19th Tuesday, January 24th Thursday, January 26th Wednesday, February 8th Thursday, February 9th	Thursday, December 22nd Monday, January 9th Thursday, January 12th Tuesday, January 17th Wednesday, January 18th Monday, February 6th Friday, February 10th

The mediation process itself is confidential. If an agreement is not reached in mediation, the City may maintain its position prior to mediation, which was the approved December 5, 2011, ballot measure, or it may make additional movement consistent with its positions in mediation. In other words, even without an agreement, the mediation process may result in additional changes to the ballot measure.

Despite a total of approximately 20 meetings, an agreement was not reached with any of the bargaining units.

Ballot Measure

During the last 7 months, the City made numerous and significant changes to the ballot measure and provided the following revised drafts to the bargaining units:

- July 5, 2011 (Original Draft Proposed Ballot Measure)
- September 9, 2011
- October 5, 2011
- October 20, 2011
- October 27, 2011
- December 5, 2011

Although mediation did not yield an agreement with any of the bargaining units, I am recommending additional changes to the ballot measure from the December 5, 2011, version which was approved by the City Council on December 6, 2011. The attached (Attachment A) reflects all of the recommended changes to the previous version of the ballot measure. These changes are a combination of clarifying language and substantive changes after mediation discussions. It is important to note that through the negotiation process, 10 of the City's 11 bargaining units at one time during the process proposed an opt-in program, which is also referred to as a voluntary election program.

The following highlights some of the recommended changes to the ballot measure since the December 5, 2011, version that was approved by the City Council. It is important to read the attached revised ballot measure which clearly identifies all of the proposed changes.

Vesting Language (Sections 2 and 5)

The revised ballot measure includes clarifications to the language regarding the City's ability to modify benefits in the future in Sections 2 and Section 5 to be consistent with the provisions in the City Charter.

Current Employees (Section 6)

The revised ballot measure includes the following changes to the compensation adjustment through additional retirement contributions for those employees who elect to stay in the current level of benefits (Tier 1).

Provision	December 5, 2011 Ballot Measure	Recommended Revision
Compensation Adjustment Increments per Fiscal Year	5% of pensionable pay	4% of pensionable pay
Compensation Adjustment Maximum	25%, but no more than 50% of the unfunded liability	16%, but no more than 50% of the unfunded liability
Compensation Adjustment Start Date	June 24, 2012	June 23, 2013

The compensation adjustments through additional retirement contributions will be in increments of 4%, with a maximum of 16% of pensionable pay. The unfunded liability serves as a limitation on the compensation adjustment employees would receive through additional retirement contributions. The adjustments are not required to be exactly in increments of 4% because they are dependent on the limitation of 50% of the pension unfunded liability.

Below is an example using the pension unfunded liability contribution rate for Fiscal Year 2012-2013 for an employee in the Federated City Employees' Retirement System. It should be noted that this is only an example and the unfunded liability contribution rate is adjusted every year based on an actuarial valuation completed by the Board's actuary. The pension unfunded liability contribution rate for Fiscal Year 2012-2013 (which is currently 100% City paid) will be 26.37%. 50% of this contribution rate is 13.185%.

The revised ballot measure reduces the cap on the compensation adjustment through additional retirement contributions to 16% of pensionable pay, but no more than 50% of the unfunded liability to be adjusted in 4% increments rather than 5%. The chart below provides an example of the compensation adjustment for future years if the pension unfunded liability contribution rate remained at 26.37% for an employee who elects to stay in the current level of retirement benefits.[1]

Fiscal Year	**Example Compensation Adjustment Increment**	**Example Total Compensation Adjustment**
Fiscal Year 2013-2014	4%	4%
Fiscal Year 2014-2015	4%	8%
Fiscal Year 2015-2016	4%	12%
Fiscal Year 2016-2017	1.185%	13.185%

In any year where the pension unfunded liability contribution rate decreases, the decrease could occur in more or less than 4% increments. For example, after the phase in example above, if the pension unfunded liability contribution rate decreased to 15% (50% of that is 7.5%), an employee's compensation adjustment through additional retirement contributions would decrease to 7.5% for that year.

If the Voluntary Election Program is not implemented for any reason, the compensation adjustment will apply to all employees. When the Voluntary Election Program is implemented, the only employees who will not have the compensation adjustment are those that opt into the Voluntary Election Program defined in the ballot measure.

Voluntary Election Program (Section 7)

In the current level of benefits (Tier 1), an employee can retire at any age after reaching 30 years of service. If an employee elects to opt into the Voluntary Election Program (VEP), in the December 5, 2011 ballot measure, the eligibility to retire at thirty (30) years of service regardless of age would increase by 6 months annually on July 1 of each year. This phase in would start the first July 1 after the Voluntary Election Program was implemented. In the revised ballot measure, this phase in would not start until July 1, 2017.

1 These numbers are only an example, the actual unfunded liability for each Fiscal Year will be determined by the Boards' actuary.

Future Employees- Limitation on Retirement Benefits- Tier 2 (Section 8)

The ballot measure itself does not define what the retirement benefit will be for new employees, rather, it sets parameters around the Tier 2 benefit. The revised ballot measure increases those parameters as follows:

Benefit Parameter	December 5, 2011 Ballot Measure	Recommended Revision
Cost of Living Increase Maximum	1% maximum based on the Consumer Price Index (CPI)	1.5% maximum based on CPI
Benefit Accrual Rate Maximum	1.5% per year of service	2% per year of service with a 65% maximum

In addition, the December 5, 2011, ballot measure states that all costs for the Tier 2 plan be shared 50/50 between the City and employees, but that the City contributions would not be less than 6.2% nor greater than 9% of base salary.

In the revised ballot measure, the City's cap on costs of 9% would be removed for a defined benefit plan and regardless of the costs of the defined benefit plan, they would be shared 50/50 between employees and the City. Below is a comparison of this cost sharing arrangement:

Benefit Parameter	December 5, 2011 Ballot Measure	Recommended Revision
Defined Benefit Plan with a Total Cost of 20% of payroll	City Cost: 9% Employee Cost:11%	City Cost: 10% Employee Cost: 10%

However, the revised ballot measure adds that the City may contribute to a defined contribution or other retirement plan only when and to the extent the total City contribution does not exceed 9% and that if the City's share of a Tier 2 defined benefit plan is less than 9%, the City may, but shall not be required to, contribute the difference to a defined contribution plan. For example, if the City's share of the costs for a defined benefit plan is 10%, no contributions would be allowed into a defined contribution plan. If the City's share of the costs for a defined benefit plan is 8%, the City could, but is not required to, contribute up to 1% (for a total of 9%) towards a defined contribution plan for the employee.

It is important to note that because the ballot measure only sets parameters for a second tier, the actual design of the second tier is subject to the negotiations process with the bargaining units. The City and the bargaining units have also reached impasse on this topic and engaged in mediation, which did not result in an agreement.

Savings (Section 14)

This section was modified to limit the application of the section to the situation in which it is determined that the City is not able to adjust compensation through additional retirement contributions, then the City would, to the extent permitted by law, adjust compensation through pay reductions.

The ballot measure will also include section numbering to be consistent with the City Charter.

CONCLUSION

The proposed ballot measure includes many significant changes and movement from earlier drafts. This movement is the result of many hours of negotiations and mediation with the City's bargaining units and consideration of the many dimensions of the difficult issue of Retirement Reform.

The proposed revised ballot measure is a critical step towards reducing retirement costs "in a manner that protects the City's viability and public safety" and "at the same time allowing for the continuation of fair post-employment benefits for its workers," as stated in the attached Retirement Reform Ballot Measure.

COORDINATION

This memo has been coordinated with the City Attorney's Office.

DEBRA FIGONE
City Manager

Attachments:

A: February 21, 2012, Revised Ballot Measure
B: December 5, 2011, Ballot Measure Approved by the City Council on December 6, 2011
C: November 22, 2011, Council Memorandum (without attachments)

EXHIBIT 20

February 8, 2012

VIA ELECTRONIC MAIL

Mr. Russell Crosby
Director of Retirement Services
Federated City Employees' Retirement System
1737 North 1st Street, Suite 580
San Jose, California 95112

Re: 5-Year Budget Projections for Federated

Dear Russell:

As requested for purposes of City budget projections, we have estimated the future contributions expected to be required of the City of San Jose to the City of San Jose Federated Employees' Retirement System (Federated Pension) and the Federated Retiree Health Care Plan (Federated OPEB) for the next five years. The table below summarizes our estimated contributions assuming City contributions are made throughout the fiscal year.

City of San Jose Federated Employees' Retirement System
(Dollar amounts in millions)

		Pension		OPEB		Total	
FYE	**Payroll**	**Amount**	**Rate**	**Amount**	**Rate**	**Amount**	**Rate**
2013	240.2	106.7	44.4%	18.9	7.9%	125.6	52.3%
2014	248.0	116.4	46.9%	41.8	16.8%	158.2	63.7%
2015	256.1	122.8	48.0%	44.6	17.4%	167.4	65.4%
2016	264.4	122.5	46.3%	46.3	17.5%	168.8	63.8%
2017	273.0	123.8	45.4%	47.8	17.5%	171.6	62.9%

Please note that these projections are based on the June 30, 2011 Actuarial Valuations for the Plans, and assume that all assumptions were exactly met since June 30, 2011 and are exactly met each and every year into the future. In reality, experience will deviate from the assumptions with the expectation that overall favorable deviations will be offset by unfavorable deviations over time. Finally, we have not adjusted the projections for any events, transactions or experience, and including investment returns, after June 30, 2011. Please refer to the valuation reports for a description of the plan provisions, a summary of the data, and a summary of the methods and assumptions used in each of the valuations.

Also as requested, we have attached 20-year projections of City pension contributions.

We hereby certify that, to the best of our knowledge, this letter and its contents, which are work products of Cheiron, Inc., are complete and accurate and have been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the Code of Professional Conduct and applicable Actuarial Standards of Practice set out by the Actuarial Standards Board. Furthermore, as credentialed actuaries, we meet the Qualification Standards of the American Academy of Actuaries to render the opinion contained in this letter. This letter does not address any contractual or legal issues. We are not attorneys and our firm does not provide any legal services or advice.

These projections were prepared exclusively for the City of San Jose for the purpose of budget projections. These projections are not intended to benefit any third party. If you have any questions about this analysis, please let us know.

Sincerely,
Cheiron

Gene Kalwarski, FSA, EA, MAAA
Principal Consulting Actuary

Margaret Tempkin, FSA, EA, MAAA
Principal Consulting Actuary

Attachment

cc: Bill Hallmark
Carmen Racy-Choy
Anne Harper

CITY OF SAN JOSE FEDERATED EMPLOYEES' RETIREMENT SYSTEM
20-YEAR PROJECTED PENSION CONTRIBUTIONS

City of San Jose
Federated Employees Retirement System
20-Year Projections of City Pension Contributions

Fiscal Year Ending	Projected City Contribution Amount (Middle of Year)	Projected City Contribution Rate (% of Payroll)
2012	$ 90,275,000	28.3%
2013	$ 106,744,000	44.5%
2014	$ 116,387,000	46.9%
2015	$ 122,835,000	48.0%
2016	$ 122,450,000	46.3%
2017	$ 123,833,000	45.4%
2018	$ 128,048,000	45.4%
2019	$ 132,385,000	45.5%
2020	$ 136,861,000	45.6%
2021	$ 141,478,000	45.6%
2022	$ 146,238,000	45.7%
2023	$ 151,143,000	45.7%
2024	$ 156,197,000	45.7%
2025	$ 161,413,000	45.8%
2026	$ 166,799,000	45.8%
2027	$ 172,365,000	45.9%
2028	$ 178,118,000	45.9%
2029	$ 184,067,000	45.9%
2030	$ 190,218,000	46.0%
2031	$ 196,580,000	46.0%
2032	$ 204,432,000	46.4%

Based on 6/30/11 actuarial valuation

EXHIBIT 21

CHEIRON Classic Values, Innovative Advice

February 21, 2012

VIA ELECTRONIC MAIL

Mr. Russell Crosby, Director of Retirement Services
City of San Jose
Police & Fire Department Retirement Plan
1737 North 1st Street, Suite 580
San Jose, California 95112

Re: 5-Year Budget Projections for Police & Fire

Dear Russell:

As requested, based on our recently completed June 30, 2011 valuations, we have estimated the future contributions expected to be required of the City of San Jose to the City of San Jose Police & Fire Department Retirement Plan (Pension Plan) and the Police & Fire Department Retiree Medical and Dental Insurance Plan (OPEB Plan) for the next five years. The table below summarizes our estimated contributions assuming City contributions are made throughout the fiscal year and that all assumptions in the valuations are exactly realized each year, since June 30, 2011. Please refer to those reports for a description of the plan provisions, a summary of the data, and a summary of the methods and assumptions used in each of the valuations.

City of San Jose Police & Fire Department Plans
Projected City Contributions*
(Dollar amounts in millions)

		Pension		OPEB		Total	
FYE	**Payroll**	**Amount**	**Rate**	**Amount**	**Rate**	**Amount**	**Rate**
2013	190.7	110.1	57.7%	15.5	8.1%	125.6	65.8%
2014	190.7	122.6	64.3%	18.0	9.5%	140.6	73.8%
2015	197.4	131.1	66.4%	20.5	10.4%	151.6	76.8%
2016	204.3	129.1	63.2%	22.2	10.9%	151.3	74.1%
2017	211.5	130.1	61.5%	23.3	11.0%	153.4	72.5%

* *In preparing these projections, we requested the most recent investment earnings for the fiscal year-to-date and whether there were any additional layoffs, pay reductions, or significant events since June 30, 2011 that could materially affect these projections. We were informed that while earnings through 12/31/2011 were well below the assumed return for that period, that January and early February returns are likely to be very positive, and the remaining four and a half months of fiscal year 2012 offers more opportunity to realize the assumed return. In addition, we were informed by the City that there were no significant changes to the workforce or payroll since June 30, 2011.*

1750 Tysons Boulevard, Suite 1100, McLean, VA 22102 Tel: 703.893.1456 Fax: 703.893.2006 www.cheiron.us

For the OPEB projections, the valuation has not been finalized, but the preliminary results indicate that the City's contributions would be in excess of the annual increase caps established in the MOAs. These projections apply the caps in the MOAs to the projected payroll, and it is assumed that the ultimate cap on the City's contribution rate of 11.0% remains in effect for the duration of the projection. In addition, these OPEB projections do not reflect future changes in benefits, penalties, taxes, or administrative costs that may be required as a result of the Patient Protection and Affordable Care Act of 2010 and related legislation and regulations. Finally, the reality will be that experience will deviate from the assumptions which could have a significant impact on these projections in the short term. However, over the long term, the expectation is that overall favorable deviations will be offset by unfavorable deviations.

Since contributions are made separately for Police and Fire members, the tables below provide the additional detail that may be needed for these projections.

City of San Jose Police & Fire Department Plans
Police Only
(Dollar amounts in millions)

		Pension		OPEB		Total	
FYE	**Payroll**	**Amount**	**Rate**	**Amount**	**Rate**	**Amount**	**Rate**
2013	121.7	69.4	57.0%	10.9	9.0%	80.3	66.0%
2014	121.7	77.4	63.6%	12.6	10.3%	90.0	73.9%
2015	126.0	82.8	65.7%	13.9	11.0%	96.7	76.7%
2016	130.4	81.5	62.5%	14.3	11.0%	95.8	73.5%
2017	135.0	82.1	60.8%	14.8	11.0%	96.9	71.8%

City of San Jose Police & Fire Department Plans
Fire Only
(Dollar amounts in millions)

		Pension		OPEB		Total	
FYE	**Payroll**	**Amount**	**Rate**	**Amount**	**Rate**	**Amount**	**Rate**
2013	69.0	40.6	58.9%	4.6	6.6%	45.2	65.5%
2014	69.0	45.2	65.5%	5.5	8.0%	50.7	73.5%
2015	71.4	48.3	67.6%	6.7	9.3%	55.0	76.9%
2016	73.9	47.6	64.4%	7.9	10.7%	55.5	75.1%
2017	76.5	48.0	62.8%	8.4	11.0%	56.4	73.8%

Also as requested, we have attached 20-year projections of City pension contributions.

We hereby certify that, to the best of our knowledge, this letter and its contents, which are work products of Cheiron, Inc., are complete and accurate and have been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the Code of Professional Conduct and applicable Actuarial Standards of

Practice set out by the Actuarial Standards Board. Furthermore, as credentialed actuaries, we meet the Qualification Standards of the American Academy of Actuaries to render the opinion contained in this letter. This letter does not address any contractual or legal issues. We are not attorneys and our firm does not provide any legal services or advice.

These projections were prepared exclusively for the City of San Jose for the purpose of budget projections. These projections are not intended to benefit any third party. If you have any questions about this analysis, please let us know.

Sincerely,
Cheiron

Gene Kalwarski, FSA, EA, MAAA
Principal Consulting Actuary

Margaret Tempkin, FSA, EA, MAAA
Principal Consulting Actuary

Attachment

cc: Bill Hallmark
Carmen Racy-Choy
Joshua Davis

EXHIBIT 22

CARROLL, BURDICK
& McDONOUGH LLP

[illegible] Montgomery Street
Suite [illegible]
San Francisco, CA
94104-[illegible]

415.[illegible]
415.[illegible] Fax
www.cbmlaw.com

Los Angeles
Sacramento
Walnut Creek

February 24, 2012

Gregg McLean Adam
Direct Dial: 415.743.2534
gadam@cbmlaw.com

VIA EMAIL AND REGULAR MAIL

Alex Gurza
Deputy City Manager
Office of the City Manager, City of San Jose
200 E Santa Clara St
San Jose, CA 95113

Re: Response to the City's Letter of February 21, 2012
File No. 038220

Dear Alex:

We are in receipt of your letter dated February 21, 2012 enclosing a copy of a revised ballot measure. It appears that this version of the ballot measure is a *possible* ballot measure, which *may* or may not replace the ballot measure the Council already approved for placement on the ballot for the June 2012 election. We note that the City Manager recommends to Council that it support these changes and authorize them to appear on a June ballot.

From the POA's initial review, this revision contains significant changes from the prior December 6, 2011 version. The City Manager, too, acknowledges "many significant changes and movement from earlier drafts."

The POA has had no opportunity to bargain about this new ballot language. Previously, as the City Manager's memorandum acknowledges, this proposal was put forward in mediation. As you know, when that occurred, significant restrictions were placed on its acceptance.

Now, because the revised ballot measure is being presented for adoption for the ballot, the POA requests to meet and confer about the new ballot language.

The POA is available to meet as soon as possible to resume bargaining.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP

Gregg McLean Adam

GMA:jo

cc: Gina Donnelly, Deputy Director of Employee Relations
Jim Unland, President, San Jose Police Officers' Association
Christopher E. Platten, Esq., Wylie, McBride, Platten & Renner
Robert Sapien, Jr., President, San Jose Fire Fighters, IAFF Local 230

EXHIBIT 23

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Manager
EMPLOYEE RELATIONS

February 27, 2012

Gregg McLean Adam
Carroll, Burdick & McDonough LLP
44 Montgomery Street, Suite 400
San Francisco, CA 94104

RE: Letter Dated February 24, 2012

Dear Mr. Adam:

I write regarding your letter delivered by email on Friday, February 24, at 4:30 p.m. First, I disagree with your statement that the POA has had no opportunity to bargain over this new ballot language. As you acknowledge in your letter, the changes in language being recommended by the City Manager are the same changes the City proposed in mediation, which were insufficient to even trigger a responsive proposal by your organization. You have had weeks to review the proposed language and to make a counterproposal. Yet, during that time, we have not heard from the POA on this issue.

Based on the history, including months of bargaining followed by two rounds of post-impasse mediation spanning four months, it is clear that changes being proposed – which may or may not be adopted by the Council – do not, in themselves, break impasse (otherwise, we would at least have expected a counterproposal during mediation).

As we have emphasized since the Council moved the date of the election from March to June, the final date for submission to the registrar of voters is 88 days before the election. Therefore, the final date for the Council to act on the measure will be its meeting on Tuesday, March 6, 2012. Given the lack of any response to our proposed language until the eleventh hour, I am concerned this is a last minute attempt at delay.

That said, if, based on the recommended changes in the measure, the POA is now prepared to make a counter-proposal for a ballot measure that (1) is a sufficient deviation from the POA's former position to break impasse; and (2) can be ratified prior to March 6th, please let me know.

Sincerely,

Alex Gurza
Deputy City Manager

cc: Gina Donnelly, Deputy Director of Employee Relations
Jon Holtzman, Renne, Sloan, Holtzman & Sakai, LLP
Jim Unland, SJPOA President

EXHIBIT 24

CBM CARROLL, BURDICK & McDONOUGH LLP

March 1, 2012

Gregg McLean Adam
Direct Dial: 415.743.2534
gadam@cbmlaw.com

~~VIA EMAIL AND REGULAR MAIL~~

Alex Gurza
Deputy City Manager
Office of the City Manager, City of San Jose
200 E Santa Clara St
San Jose, CA 95113

Re: SJPOA Request to Bargain; Information Request
File No. 038220

Dear Alex:

We received your letter of February 27. In our reading of it, the City appears to be unwilling to bargain with the POA over the new proposed ballot measure language that was included with your prior letter of February 21. The City maintains that (1) the parties remain at impasse and (2) the ballot measure must go to the voters in June, either as the December 5, 2011 language or the new February 23, 2012 language. It seems unyielding on each issue.

It is unfortunate that your letter conditions any further dialogue on the POA making—right now—a counterproposal to the new language. Yet, as your letter implicitly acknowledges, there have been no direct negotiations about this new language. It is true, as you point out, that "the changes being recommended by the City Manager are the same changes the City proposed *in* the mediation ...." But when the City presented this language in mediation it did so with the express provision that the proposal would be withdrawn unless accepted in full, in which case the December 5 ballot measure language would go forward. The parties spent minimal face-to-face time discussing the new language in mediation.

The POA also believes that it is illegal for the City to limit bargaining due to its desire to finalize its ballot measure by March 6th. (See *Santa Clara County Registered Nurses Professional Association v. County of Santa Clara* (2010) 34 PERC ¶ 109 ["mere fact that the County thought the inclusion of the measure on the November 2004 ballot was desirable does not constitute a compelling operational necessity sufficient to set aside its bargaining obligation"].) Thus, while the City purports to be willing to consider a further counterproposal, it is requiring that ratification occur by March 6—i.e., conditioning negotiations on the parties reaching agreement and ratifying within a few days.

The reality is that there is much to bargain about. The estimations about the City's future projected pension costs are in a state of significant flux. Projections continue to lower—dramatically. In an NBC News Bay Area Report on February 23, 2012, for example, it was reported that the City's Retirement Director had received a new estimation from the Retirement System's actuaries showing that the projected cost of employee pensions in five years had dropped further to $310 million. This is down significantly from the $650 million where the City started (but see below), and from the $430 million touted until recently.

The POA has significant questions about the new language. For example, the City is now, for the first time, proposing to override Section 1111 of the City Charter to the extent that impasses concerning retirement benefits will no longer be subject to arbitration. This significant change has not been the subject of our prior bargaining.

Bear in mind, too, that the Governor's Pension Proposal is designed to apply to charter cities. One city representative was heard in a public forum suggesting that any additional costs to employees as a result of the Governor's proposal could well be in addition to those added costs to employees resulting from the ballot measure. If so, that would seem to suggest that the City would garner a significant windfall. The bottom line is that the parties had minimal discussion at the bargaining table about the impact of a gubernatorial proposal that appears to be destined to appear on the statewide ballot in November. The parties should be negotiating the impact of that proposal in addition.

As the POA considers further proposals, we request the following information:

- **Any new retirement projections received by the City from either its actuaries or those of the Retirement System.**
- **The City's Projected Total Personnel Costs, including health care and retirement, in the 2010/11 Budget.**
- **The City's actual Total Personnel Costs, including health care and retirement, in 2010/11 Budget.**
- **The City's Projected Total Personnel Costs, including health care and retirement, in the 2011/12 Budget.**

- **The City's actual Total Personnel Costs, including health care and retirement, for the period July 1, 2011 to February 29, 2012.**

- **Any City-produced information, or information received by the City, supporting the assertion that $650 million is, or ever was, a potential City retirement cost by 2015-16 or beyond.** (As recently as February 9, 2012, in various television news interviews, the Mayor indicated that: "$650 million is a reasonable, ballpark number even today.")

- **Any documentation of the specific savings target now being sought by the City, annualized, through its various proposals related to retirement, retiree health care and healthcare. We also ask for a breakdown by each element of both the ballot measure language proposals of December 5, 2011 and February 21, 2012.**

- **Any difference in projected savings between the City's ballot measure language proposals of December 5, 2011 and February 21, 2012.**

- **The expected cost savings of the City's ballot measure language dated February 21, 2012.**

- **The expected cost savings of the Voluntary Election Program described in section 6 of the proposal dated February 21, 2012.**

- **Any City costing of the Police and Fire proposal of November 18, 2011 and December 1, 2011.**

- **Savings projections for the City's October 24, 2011 proposal to POA/Local 230 on retirement benefits for new employees.**

Please provide us with this information at the City's earliest opportunity. In the interest of a collaborative relationship, we seek it first through our right to relevant information as part of the bargaining process (rather than a formal CPRA request).

Separate and apart from the above request for information, and aside from the request to resume bargaining, please provide us with the numeric value of the savings target the City is seeking through its various retirement reforms. And please provide us with an answer to the following question: *Are the City's retirement reforms, and the savings it seeks thereunder, based on* *reducing pension costs from $650 million or some lower amount?* If the latter, please provide the specific number the City is relying on.

We urge the City to rethink its rejection of further bargaining.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP

Gregg McLean Adam

GMA:jo
cc: Jim Unland, President, San Jose POA
John Robb, Vice President, San Jose POA

EXHIBIT 25

San Jose Fire Fighters · Local 230

425 E. Santa Clara Street, Suite 300, San Jose, CA 95113 · (408) 286-8718 · FAX (408) 286-2577

• SAN JOSE • FIRE FIGHTERS LOCAL 230™

March 2, 2012

Alex Gurza, Deputy City Manager,
~~City of San Jose – Office of Employee Relations~~
200 E. Santa Clara Street
San Jose, CA 95113

Re: San Jose Fire Fighters, Local 230 & San Jose Police Officer's Association Retirement Reform

Dear Alex,

Please find the attached proposal from San Jose Fire Fighters, Local 230 and the San Jose Police Officer's Association. This offer provides substantial savings to the City both in the near and long-term. Our proposal achieves lawful, structural reform for the city, employees and the taxpayers.

We understand from our mediation and negotiation sessions with the City that you have a concern regarding the participation rates of current employees in our "opt-in" proposal for Tier II. As such, we are offering a major pension reform enhancement contained in our offer: the **Reform Immediate Performance Guarantee.**

In short, we've structured our opt-in proposal so that **the city is guaranteed the savings of 100% employee participation**, even if the employee election rate falls short of that target. Our internal polling data showed that our participation rate would meet or exceed 66% for our proposal. **If fewer than 60% of all active members opt into Tiers II or III, we will agree to pay reductions on a sliding scale up to 16% to help achieve the savings goal** (details attached).

We believe our guarantee provides the City with the assurances it stated it needed in order to accept our proposal. **This is a viable, lawful strategy to achieve pension reform that saves the City tens of millions of dollars each and every year.**

Throughout the negotiations process we have been committed to lawful pension reform. This proposal demonstrates our seriousness to addressing this challenge to benefit the City, employees and the residents we serve.

Sincerely,

Robert Sapien, Jr., President

SJPOA and LOCAL 230
RETIREMENT REFORM PROPOSAL SUMMARY
Objective: Lawful & Cost-Saving Pension Reform

Tier III (New Hires)	Tier II (Actives)	Tier I (Actives)
2% @ 50 years (CalPERS)	3% @ 55 years (CalPERS)	No Change (SJ P&F Plan)
3 Year Final Average Salary	3 Year Final Average Salary	No Change
~~No Sick Leave Payout~~	~~No Sick Leave Payout~~	~~No Change~~
Sick Leave Conversion 20965	Sick Leave Conversion 20965	No Change
4th Level Survivor Death Benefit (Spouse & Children) 21574	4th Level Survivor Death Benefit (Spouse & Children) 21574	No Change
Post Retirement Survivor Allowance 21624, 21626, and 21628	Post Retirement Survivor Allowance 21624, 21626, and 21628	No Change
CPI with 2% max COLA	CPI with 3% max COLA	No Change
OPEB (HD* Medical) SJ Health and Dental Plan	OPEB (HD* Medical) SJ Health and Dental Plan	OPEB (HD* Medical) SJ Health and Dental Plan
"Long Beach" Worker's Compensation Dispute Resolution Process	"Long Beach" Worker's Compensation Dispute Resolution Process	"Long Beach" Worker's Compensation Dispute Resolution Process
No SRBR	No SRBR	SRBR converted to GPP
10% Employee Normal Cost Sharing	10% Employee Normal Cost Sharing	No Change Remains 8:3 split
Retiree Healthcare Pre-funding 10% Cap	Retiree Healthcare Pre-funding 10% Cap	Retiree Healthcare Pre-funding 10% Cap
Military Service Credit 21024	Military Service Credit 21024	No change
Alternative Death Benefit 21547.7	Alternative Death Benefit 21547.7	No change
Term: 4 Years		

*Retiree Health Care Purchasing Protection Provision

Age at Date of Hire	Years of Service	Age at Retirement	Current Plan	Tier II (Actives)	Tier III
25	25	50	75%/70%	60%	50%
25	28	53	84%/82%	77.28%	67.76%
25	30	55	90%/90%	90%	81%

SJPOA and LOCAL 230
RETIREMENT REFORM PROPOSAL SUMMARY

Objective: Lawful & Cost-Saving Pension Reform

Pension Reform Performance Guarantee

To address concerns about the reliability of the member polling data and guaranteed savings, the following Reform Immediate Performance Guarantee is included with the proposal. Polling data indicated that the participation rate would meet or exceed 66% for this proposal.

If fewer than 60% of all active members opt into Tiers II or III, pay reductions based upon participation rates will result as indicated below. Calculation will be inclusive of all active members (Tier I Tier II). Beginning the first February 1 date following the establishment of the Tier II option, annual pay reductions of no greater than 4% up to 16% at the lowest participation level.

Example: If only 50% of all active members opt into the new plan then all plan members will take a 4% pay reduction in the first year and 2% in the second year.

Opt-In Rate (all actives)	Reform Immediate Performance Guarantee	Additional Savings* (Millions) estimated
<100%	--	100% Participation = $29.9
<90%	--	90% Participation = $26.9
<80%	--	80% Participation =$23.9
<70%	--	70% Participation = $21.1
<60%	4% Pay Reduction	$7.4 Pay Reduction + $20.1 Opt In Savings = $27.5
<50%	6% Pay Reduction	$11.1 Pay Reduction +$16.1 Opt In Savings = $27.2 Million
<40%	8% Pay Reduction	$14.9 Pay Reduction + 13.9 Opt In Savings = $28.6
<30%	10% Pay Reduction	$18.6 Pay Reduction + $11.9 Opt In Savings = $30.5
<20%	14% Pay Reduction	$26.0 Pay Reduction + $9.9 Opt In Savings = $35.9
<10%	16% Pay Reduction	$29.7 Payroll + $8.1 Opt In Savings = $37.8

*In 2010, Police and Fire employees agreed to a 10% decrease in pay resulting in substantial savings in pension costs. A similar proportionate effect would occur if additional reductions are triggered by the Performance Guarantee. These additional savings are not included in these estimates.

Retiree Medical Benefit

Adopt Kaiser "High Deductible" Plan and provide a Retiree Healthcare Purchasing Protection Provision (i.e., Retirees will contribute equivalent to actives).

Adoption of this plan will result in a dramatic decrease to the Retirement Healthcare Plan's annual premium cost and a lowering of the current unfunded healthcare liability.

EXHIBIT 26

1151 N. Fourth Street
San Jose, CA 95112
(408) 298-1133

SAN JOSE FIRE FIGHTERS
LOCAL 230

425 E. Santa Clara St., #300
San Jose, CA 95113
(408) 286-8718

March 3, 2012

Alex Gurza
200 East Santa Clara Street
San Jose, CA 95113

RE: Pension Savings Guarantee Proposal of March 2, 2012

Dear Alex,

We agree that a negotiated solution alone will not solve our long-term pension problems. The City Charter guarantees minimum retirement benefits, and the only way to change the Charter is with a vote of the people. Thus, we must go to the voters to achieve lasting change and gain control of pension costs that have already cost services and city jobs.

We will be transmitting to you Charter change language that incorporates elements of our Pension Savings Guarantee Proposal and we urge that these Charter changes be put on the June 2012 ballot so that the voters can adopt our lawful pension reform proposal and eliminate the inevitable and costly legal battle.

In addition, we would propose that the parties agree that discussions from 10:00 AM on March 3, 2012 thru 11:59 PM on March 9, 2012 cannot be used by either party for the purpose of establishing compliance or non-compliance with bargaining obligations related to the City's proposed pension charter amendment.

With the City confirming that there will be a budget surplus for the first time in many years and the city's current ballot measure proposal stating that pension reform would not be implemented until July of 2013 there is ample time to adopt our proposal and ensure that future budget deficits are eliminated.

Our guarantee of savings within our proposals provides the City certainty and eliminates the need for the legally risky path the City is currently on.

We are available at any time to meet and answer any questions you may have.

Sincerely,

Jim C. Unland
SJPOA President

Robert Sapien
Local 230 President

EXHIBIT 27

RENNE SLOAN HOLTZMAN SAKAI LLP

350 Sansome Street, Suite 300
San Francisco, CA 94104-1304
t: 415.678.3800
f: 415.678.3838

Jonathan V. Holtzman
(415) 678-3807
jholtzman@publiclawgroup.com

March 5, 2012

VIA E-MAIL AND U.S. MAIL

Gregg Adam
Carroll, Burdick & McDonough LLP
44 Montgomery Street, Suite 400
San Francisco, CA 94104

Re: Retirement Reform Correspondence

Dear Gregg:

I write in response to letters from you and your client dated March 1st, and your joint proposal and letter with the San Jose Fire Fighters (IAFF, Local 230) dated March 2nd and 3rd. (Enclosed.) We will be responding to the information requests contained in your March 1st letter separately. I note that your proposal was received 21 days after our last day of mediation, and only one working day before the City Council is scheduled to vote on the proposed retirement ballot measure.

The City of San Jose appreciates your explicit recognition that a charter amendment is necessary to address the retirement issues facing the City. We also appreciate your attempt to end the impasse that has continued over many months of mediation. We have carefully reviewed and considered this proposal as an attempt to break the current impasse between the parties.

Unfortunately, your new proposal appears to be a step backwards in some regards, including the re-introduction of the CalPERS option that the City rejected months ago. We discussed this proposal at length and ultimately rejected it during negotiations and mediation. Subsequent to your CalPERS proposal made initially in September 2011, the POA and Local 230 proposed in December 2011 a lower level of benefit for the opt-in tier that provides a 75% maximum benefit. However, you are now back to proposing the CalPERS benefits, including an opt in tier that provides a 90% maximum benefit. This underscores the fact that the parties continue to be at impasse after 8 months of negotiations and mediation.

While I will not attempt to address all of the points of difference between this proposal and the City's, the following are some of the major issues which would need to be addressed to bridge the current impasse:

- The proposal returns to the idea of moving employees out of the current, independent San Jose Police and Fire Department Retirement Plan and into the State's CalPERS plans. The City has previously rejected this proposal for a variety of reasons – not least because the primary "savings" the City would achieve is simply a delay in paying existing liabilities due to restarting the amortization period. In addition, among other things, moving employees from the City's pension plan to CalPERS would require redistributing existing plan assets to CalPERS, a difficult problem in light of the underfunded status of the plan and the fact that all retirees and Tier I employees would remain in San Jose's retirement plan. And, of course, CalPERS offers the City and unions far less flexibility in how benefits can be structured. We have discussed all of these concerns previously and had understood that the POA had agreed to drop this proposal. Therefore, we are surprised that you have chosen to revive it at this late date.

- The proposal for the opt in tier is back to your September 2011 proposal that would provide the CalPERS 3% at 55 plan, which (as we have previously discussed) provides little if any savings to the City. Indeed, the plan at certain ages and years of service is actually richer for employees. The formula still provides a 90% pension benefit at 30 years of service.

- With respect to new employees, although CalPERS identifies the plan as 2% at 50, this CalPERS formula provides 2.7% of final compensation for every year of service at age 55. This is a considerably greater benefit with a considerably higher cost than the plan the City is proposing for new employees. For example, the revised proposed ballot measure would limit a defined benefit pension program to no more than 2% for every year of service. Also, while the City is seeking a 50/50 cost share for new employees, the plan you propose would limit employee contributions to 10% regardless of unfunded liability. (Incidentally, we understand that the CalPERS regulations currently limit contributions to 9%.) As we have said, the City views shared responsibility for the cost of any pension plan covering new employees as critical if the City is to continue offering defined benefit plans in the future.

- The "guarantee" of pay reductions if fewer than 60% of covered employees opt in to Tier II of the program appears to be a slightly new approach. However, given that the CalPERS program offered is little changed from existing benefits offered, we do not doubt that the opt in rate would be considerable. The problem is that even 100% opt in would not materially reduce the benefits offered. Therefore, it seems unlikely to produce the "guaranteed" savings you assert. We did note, however, that your proposal includes compensation reductions of up to 16% to achieve savings. This is consistent with the City's proposed revised ballot measure, which achieves savings from compensation reductions through additional retirement contributions or pay reductions that apply to those employees who choose to stay in the more expensive current benefit structure. However, your proposed compensation reductions are tied to the proposal that moves employees to the 3% at 55 (90%) CalPERS benefit.

As we have discussed in negotiations and mediation, there are many other ways in which the proposal you are making fails adequately to address the City's concerns, as they have been articulated both at the table and in the draft ballot measures we have provided you.

In your March 1st letter, you suggest that the language changes proposed by the City Manager – provided to the Union in mediation – require additional meet and confer and that *Santa Clara County Registered Nurses v. County of Santa Clara* stands for the proposition that the City is legally obligated to once again delay the ballot measure. We disagree on both counts. As to the first, without wishing to reveal matters within the veil of mediation, suffice it to say the San Jose Police Officers' Association had more than sufficient opportunity to respond to the City's proposal. The City left mediation on February 10, 2012, saying the door remained open for additional mediation sessions and the mediator provided the parties with additional dates. However, we did not receive a substantive proposal until March 2nd (one working day before the City Council's last day to act to place the matter on the ballot for a June 2012 election), and that proposal, as discussed above, differs little from the proposal the City rejected pre-mediation. No change made or proposal proffered in the last month even remotely suggests impasse has been broken.

As to the second point, the facts of this case are radically at variance with the *Santa Clara* case. We have negotiated and mediated for 8 months now, and twice delayed the election to permit further mediation. We do not believe the *Santa Clara* case stands for the proposition that any change in position on either side bars the City from placing a matter on the ballot. The City Council, of course, has the constitutional authority to place charter amendments on the ballot, and, while we believe we have fully complied with all bargaining obligations under the MMBA, in the last analysis, the City Council retains the authority to make changes in the measure, especially changes responsive to the Unions' input in mediation.

We value our historically positive relations with the POA, and share your apparent wish that the *Seal Beach* negotiations had led to greater consensus. However, your newest proposal only appears to highlight the deep differences between the parties on critical issues involved in pension reform. These are hard issues, to be sure. We do not doubt the differences are sincere. However, our last proposal is as far as we can go in addressing the concerns you have raised (as we assume yours does with our concerns), and do not believe anything in the last few weeks raises the hope that returning to the bargaining table will produce a different result.

Finally, even if you believe the parties may break impasse on the critical issues, despite our unsuccessful efforts over the past eight months and despite your earlier rejection of the City's

RENNE SLOAN HOLTZMAN SAKAI LLP

current proposal, the untimeliness of your proposal renders further bargaining impractical. We do not see how an agreement can be reached before March 6th – the final City Council meeting before the last date to place this measure on the June 2012 ballot.

In December, when the City Council previously intended to place a measure on the ballot (for a March 2012 election) bargaining units argued that delaying the measure until June 2012 would enable the parties to reach an agreement. The City complied with this request because it clearly reflected a sincere desire to reach an agreement through further mediation. We continue to appreciate your efforts to reach an agreement, but, frankly, we do not see how issues that have separated the parties for eight months can be solved at this point. Nor do we understand why the POA and Local 230 failed to make this proposal at an earlier date, especially since on February 10th the City presented to you in mediation the proposal that is before the City Council on March 6th.

Sincerely,

Jonathan V. Holtzman

JVH/je

cc: Alex Gurza, Deputy City Manager

Enclosures

San Jose Fire Fighters • Local 230
425 E. Santa Clara Street, Suite 300, San Jose, CA 95113 • (408) 286-8718 • FAX (408) 286-2577

SAN JOSE FIRE FIGHTERS LOCAL 230™

March 2, 2012

Alex Gurza, Deputy City Manager,
~~City of San Jose – Office of Employee Relations~~
200 E. Santa Clara Street
San Jose, CA 95113

Re: San Jose Fire Fighters, Local 230 & San Jose Police Officer's Association Retirement Reform

Dear Alex,

Please find the attached proposal from San Jose Fire Fighters, Local 230 and the San Jose Police Officer's Association. This offer provides substantial savings to the City both in the near and long-term. Our proposal achieves lawful, structural reform for the city, employees and the taxpayers.

We understand from our mediation and negotiation sessions with the City that you have a concern regarding the participation rates of current employees in our "opt-in" proposal for Tier II. As such, we are offering a major pension reform enhancement contained in our offer: the **Reform Immediate Performance Guarantee.**

In short, we've structured our opt-in proposal so that **the city is guaranteed the savings of 100% employee participation**, even if the employee election rate falls short of that target. Our internal polling data showed that our participation rate would meet or exceed 66% for our proposal. **If fewer than 60% of all active members opt into Tiers II or III, we will agree to pay reductions on a sliding scale up to 16% to help achieve the savings goal** (details attached).

We believe our guarantee provides the City with the assurances it stated it needed in order to accept our proposal. **This is a viable, lawful strategy to achieve pension reform that saves the City tens of millions of dollars each and every year.**

Throughout the negotiations process we have been committed to lawful pension reform. This proposal demonstrates our seriousness to addressing this challenge to benefit the City, employees and the residents we serve.

Sincerely,

Robert Sapien, Jr., President

SJPOA and LOCAL 230
RETIREMENT REFORM PROPOSAL SUMMARY

Objective: Lawful & Cost-Saving Pension Reform

Tier III (New Hires)	Tier II (Actives)	Tier I (Actives)
2% @ 50 years (CalPERS)	3% @ 55 years (CalPERS)	No Change (SJ P&F Plan)
3 Year Final Average Salary	3 Year Final Average Salary	No Change
No Sick Leave Payout	No Sick Leave Payout	No Change
Sick Leave Conversion 20965	Sick Leave Conversion 20965	No Change
4th Level Survivor Death Benefit (Spouse & Children) 21574	4th Level Survivor Death Benefit (Spouse & Children) 21574	No Change
Post Retirement Survivor Allowance 21624, 21626, and 21628	Post Retirement Survivor Allowance 21624, 21626, and 21628	No Change
CPI with 2% max COLA	CPI with 3% max COLA	No Change
OPEB (HD* Medical) SJ Health and Dental Plan	OPEB (HD* Medical) SJ Health and Dental Plan	OPEB (HD* Medical) SJ Health and Dental Plan
"Long Beach" Worker's Compensation Dispute Resolution Process	"Long Beach" Worker's Compensation Dispute Resolution Process	"Long Beach" Worker's Compensation Dispute Resolution Process
No SRBR	No SRBR	SRBR converted to GPP
10% Employee Normal Cost Sharing	10% Employee Normal Cost Sharing	No Change Remains 8:3 split
Retiree Healthcare Pre-funding 10% Cap	Retiree Healthcare Pre-funding 10% Cap	Retiree Healthcare Pre-funding 10% Cap
Military Service Credit 21024	Military Service Credit 21024	No change
Alternative Death Benefit 21547.7	Alternative Death Benefit 21547.7	No change
Term: 4 Years		

*Retiree Health Care Purchasing Protection Provision

Age at Date of Hire	Years of Service	Age at Retirement	Current Plan	Tier II (Actives)	Tier III
25	25	50	75%/70%	60%	50%
25	28	53	84%/82%	77.28%	67.76%
25	30	55	90%/90%	90%	81%

SJPOA and LOCAL 230
RETIREMENT REFORM PROPOSAL SUMMARY
Objective: Lawful & Cost-Saving Pension Reform

Pension Reform Performance Guarantee

To address concerns about the reliability of the member polling data and guaranteed savings, the following Reform Immediate Performance Guarantee is included with the proposal. Polling data indicated that the participation rate would meet or exceed 66% for this proposal.

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SAN JOSE FIRE FIGHTERS
LOCAL 230

425 E. Santa Clara St., #300
San Jose, CA 95113
(408) 286-8718

March 3, 2012

Alex Gurza
200 East Santa Clara Street
San Jose, CA 95113

RE: Pension Savings Guarantee Proposal of March 2, 2012

Dear Alex,

We agree that a negotiated solution alone will not solve our long-term pension problems. The City Charter guarantees minimum retirement benefits, and the only way to change the Charter is with a vote of the people. Thus, we must go to the voters to achieve lasting change and gain control of pension costs that have already cost services and city jobs.

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In addition, we would propose that the parties agree that discussions from 10:00 AM on March 3, 2012 thru 11:59 PM on March 9, 2012 cannot be used by either party for the purpose of establishing compliance or non-compliance with bargaining obligations related to the City's proposed pension charter amendment.

With the City confirming that there will be a budget surplus for the first time in many years and the city's current ballot measure proposal stating that pension reform would not be implemented until July of 2013 there is ample time to adopt our proposal and ensure that future budget deficits are eliminated.

Our guarantee of savings within our proposals provides the City certainty and eliminates the need for the legally risky path the City is currently on.

We are available at any time to meet and answer any questions you may have.

Sincerely,

Jim C. Unland
SJPOA President

Robert Sapien
Local 230 President

CBM CARROLL, BURDICK & McDONOUGH LLP

March 1, 2012

Gregg McLean Adam
Direct Dial: 415.743.2534
gadam@cbmlaw.com

VIA EMAIL AND REGULAR MAIL

Alex Gurza
Deputy City Manager
Office of the City Manager, City of San Jose
200 E Santa Clara St
San Jose, CA 95113

Re: SJPOA Request to Bargain; Information Request
File No. 038220

Dear Alex:

We received your letter of February 27. In our reading of it, the City appears to be unwilling to bargain with the POA over the new proposed ballot measure language that was included with your prior letter of February 21. The City maintains that (1) the parties remain at impasse and (2) the ballot measure must go to the voters in June, either as the December 5, 2011 language or the new February 23, 2012 language. It seems unyielding on each issue.

It is unfortunate that your letter conditions any further dialogue on the POA making—right now—a counterproposal to the new language. Yet, as your letter implicitly acknowledges, there have been no direct negotiations about this new language. It is true, as you point out, that "the changes being recommended by the City Manager are the same changes the City proposed *in* the mediation ...." But when the City presented this language in mediation it did so with the express provision that the proposal would be withdrawn unless accepted in full, in which case the December 5 ballot measure language would go forward. The parties spent minimal face-to-face time discussing the new language in mediation.

The POA also believes that it is illegal for the City to limit bargaining due to its desire to finalize its ballot measure by March 6th. (See *Santa Clara County Registered Nurses Professional Association v. County of Santa Clara* (2010) 34 PERC ¶ 109 ["mere fact that the County thought the inclusion of the measure on the November 2004 ballot was desirable does not constitute a compelling operational necessity sufficient to set aside its bargaining obligation"].) Thus, while the City purports to be willing to consider a further counterproposal, it is requiring that ratification occur by March 6—i.e., conditioning negotiations on the parties reaching agreement and ratifying within a few days.

The reality is that there is much to bargain about. The estimations about the City's future projected pension costs are in a state of significant flux. Projections continue to lower—dramatically. In an NBC News Bay Area Report on February 23, 2012, for example, it was reported that the City's Retirement Director had received a new estimation from the Retirement System's actuaries showing that the projected cost of employee pensions in five years had dropped further to $310 million. This is down significantly from the $650 million where the City started (but see below), and from the $430 million touted until recently.

The POA has significant questions about the new language. For example, the City is now, for the first time, proposing to override Section 1111 of the City Charter to the extent that impasses concerning retirement benefits will no longer be subject to arbitration. This significant change has not been the subject of our prior bargaining.

Bear in mind, too, that the Governor's Pension Proposal is designed to apply to charter cities. One city representative was heard in a public forum suggesting that any additional costs to employees as a result of the Governor's proposal could well be in addition to those added costs to employees resulting from the ballot measure. If so, that would seem to suggest that the City would garner a significant windfall. The bottom line is that the parties had minimal discussion at the bargaining table about the impact of a gubernatorial proposal that appears to be destined to appear on the statewide ballot in November. The parties should be negotiating the impact of that proposal in addition.

As the POA considers further proposals, we request the following information:

- **Any new retirement projections received by the City from either its actuaries or those of the Retirement System.**
- **The City's Projected Total Personnel Costs, including health care and retirement, in the 2010/11 Budget.**
- **The City's actual Total Personnel Costs, including health care and retirement, in 2010/11 Budget.**
- **The City's Projected Total Personnel Costs, including health care and retirement, in the 2011/12 Budget.**

- **The City's actual Total Personnel Costs, including health care and retirement, for the period July 1, 2011 to February 29, 2012.**

- **Any City-produced information, or information received by the City, supporting the assertion that $650 million is, or ever was, a potential City retirement cost by 2015-16 or beyond.** (As recently as February 9, 2012, in various television news interviews, the Mayor indicated that: "$650 million is a reasonable, ballpark number even today.")

- **Any documentation of the specific savings target now being sought by the City, annualized, through its various proposals related to retirement, retiree health care and healthcare. We also ask for a breakdown by each element of both the ballot measure language proposals of December 5, 2011 and February 21, 2012.**

- **Any difference in projected savings between the City's ballot measure language proposals of December 5, 2011 and February 21, 2012.**

- **The expected cost savings of the City's ballot measure language dated February 21, 2012.**

- **The expected cost savings of the Voluntary Election Program described in section 6 of the proposal dated February 21, 2012.**

- **Any City costing of the Police and Fire proposal of November 18, 2011 and December 1, 2011.**

- **Savings projections for the City's October 24, 2011 proposal to POA/Local 230 on retirement benefits for new employees.**

Please provide us with this information at the City's earliest opportunity. In the interest of a collaborative relationship, we seek it first through our right to relevant information as part of the bargaining process (rather than a formal CPRA request).

Separate and apart from the above request for information, and aside from the request to resume bargaining, please provide us with the numeric value of the savings target the City is seeking through its various retirement reforms. And please provide us with an answer to the following question: *Are the City's retirement reforms, and the savings it seeks thereunder, based on* *reducing pension costs from $650 million or some lower amount?* If the latter, please provide the specific number the City is relying on.

We urge the City to rethink its rejection of further bargaining.

Very truly yours,

CARROLL, BURDICK & McDONOUGH LLP

Gregg McLean Adam

GMA:jo
cc: Jim Unland, President, San Jose POA
John Robb, Vice President, San Jose POA

CBM-SF\SF542857

EXHIBIT 28

City Council Agenda: 03-20-12
Item:

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: CITY COUNCIL

FROM: Mayor Chuck Reed

SUBJECT: MARCH BUDGET MESSAGE FOR FISCAL YEAR 2012-2013

DATE: March 9, 2012

Approved: Chuck Reed

Date: 3/9/12

RECOMMENDATION

I recommend that the City Council direct the City Manager to submit a proposed budget for Fiscal Year 2012-2013 that is balanced and guided by the policy direction and framework of priorities outlined in the Mayor's March Budget Message.

INTRODUCTION

I want to thank our City Manager and City employees for their hard work and personal sacrifices. Our employees are dedicated and work hard to deliver high quality services to the residents of San José. San José has one of the lowest ratios of employees per capita for any big city in the country and our employees continually do more with less.

Over the past ten years, San José has faced enormous fiscal challenges. As pension and healthcare costs skyrocketed, we drained money out of services and poured it into retirement benefits. We've eliminated thousands of jobs from our workforce, closed community centers, laid off police officers and fire fighters, watched our streets and infrastructure deteriorate, and cut many other core services in the community. This has had a devastating impact on our residents, our businesses and our employees.

Fortunately, our Fiscal Reform Plan is working. Because of a willingness to make some very difficult decisions, our City's fiscal situation has begun to improve. For example, the painful decision to eliminate hundreds of positions and reduce total compensation by 10% for all employees reduced our payroll costs by 24%, which slowed the rate of growth in retirement costs. We have also saved millions of dollars in annual operating costs by contracting out services and reorganizing departments.

In addition, we are beginning to see signs of economic recovery. While our two largest sources of General Fund revenues, sales tax and property tax, remain below pre-recession levels, we are expecting modest growth in the coming years.

As detailed in the chart below, after a decade of budget deficits, the City Manager is now projecting a $10 million surplus for the 2012-2013 Fiscal Year. This is good news and will allow us to minimize service impacts in the coming year, but we're not out of the woods yet. This is just a one-year reprieve before retirement costs continue to grow again.

2013-2017 General Fund Forecast
Incremental General Fund Surplus (Shortfall)

2012-2013	2013-2014	2014-2015	2015-2016	2016-2017
$10.0 M	($22.5 M)	($1.3 M)	$19.0 M	$10.7 M

Ongoing Fiscal Challenges

The City is projecting a $22.5 million deficit in Fiscal Year 2013-2014. The primary reason for the shortfall in the second year of the Forecast is due to a $29.5 million increase in retirement expenses alone. As detailed in the chart below, during the Forecast period, General Fund retirement contributions will increase by $48.3 million to $233.9 million in 2016-2017. For all funds, the City retirement contribution will increase by $68.2 million to $314.0 million in 2016-2017. According to data presented to the City Council on February 13, 2012, the independent retirement boards' actuaries have predicted that the City's annual contributions will continue to increase for many more years after that.

2013-2017 CITY RETIREMENT CONTRIBUTION COSTS
AND BUDGETARY CITY RETIREMENT CONTRIBUTION RATES
($ in Millions and with Pre-Payment Discount)

Retirement Plan	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017
Federated Ret. System – Pension	$44.3	$54.5	$58.1	$61.2	$61.1	$61.7
Fed. Ret. System – Retiree Healthcare	$10.9	$9.7	$20.8	$22.3	$23.1	$23.8
Federated Retirement Plan - Total	$55.2	$64.2	$78.9	$83.4	$84.2	$85.5
Budgetary Contribution Rates	*43.7%*	*50.5%*	*61.8%*	*65.2%*	*65.4%*	*66.2%*
Police Retirement Plan – Pension	$74.8	$66.8	$74.6	$79.9	$78.6	$79.2
Police Ret. Plan – Retiree Healthcare	$11.6	$10.5	$12.2	$13.4	$13.8	$14.5
Police Retirement Plan – Total	$86.3	$77.3	$86.8	$93.3	$92.4	$93.6
Budgetary Contribution Rates	*75.1%*	*65.7%*	*73.5%*	*78.9%*	*78.1%*	*78.8%*
Fire Retirement Plan – Pension	$46.0	$39.2	$43.6	$46.6	$45.9	$46.3
Fire Ret. Plan – Retiree Healthcare	$4.7	$4.4	$5.3	$6.4	$7.6	$8.1
Fire Retirement Plan - Total	$50.7	$43.6	$48.9	$53.0	$53.5	$54.4
Budgetary Contribution Rates	*74.0%*	*64.0%*	*71.3%*	*76.9%*	*77.2%*	*78.1%*
Other Retirement Costs	$0.6	$0.6	$0.6	$0.6	$0.6	$0.6
Total General Fund	**$192.8**	**$185.6**	**$215.1**	**$230.5**	**$230.6**	**$233.9**
Total All Funds	**$245.5**	**$245.8**	**$285.9**	**$308.4**	**$309.3**	**$314.0**

Source: 2011-2012 Modified Budget; Cheiron Letters dated February 8, 2012 and February 21, 2012 with applied pre-payment discount

It is also important to note that according to actuaries for the independent retirement plans, we are not yet fully funding our retiree healthcare contributions. Our unfunded liability went up by over $247 million in 2011 and our two plans currently have $1.9 billion in unfunded liabilities.[1] The City and employees are still in the phase-in period for paying the full annual retiree

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[1] Cheiron's June 30, 2011 OPEB Valuations: March 1, 2012 Presentation to the Police and Fire Retirement Board (http://www.sjretirement.com/uploads/PF/3_2itemPFMar12.pdf see p.6) & January 19, 2012 Presentation to the Federated Employees Retirement Board (http://www.sjretirement.com/uploads/FED/4_1itemFedJan12.pdf see p. 4)

healthcare contribution. Once the phase-in is complete, we will see dramatic increases in retiree healthcare costs.

According to the chart above, taken from the Manager's Five-Year Forecast (p17,) the City's retiree healthcare contributions to the Federated Plan (out of the General Fund) are expected to double once the phase-in ends for that plan in Fiscal Year 2013-2014. The cost implications of completing the phase-in period for the Police/Fire Plan are not yet known and have not been factored into the projections above - but we should be prepared for a similar impact. These looming cost increases underscore the need to establish a lower cost retiree healthcare plan.

Unfortunately, the City's actual retirement costs could grow even higher if there is another recession (and the retirement funds' investments lose money or stay flat) or if the independent retirement boards adopt more realistic assumptions. The retirement boards have been advised by their actuaries and their professional staff to lower their assumed rate of return. According to data provided by the boards' actuaries, reducing the assumed rate of return from 7.5% to 7.25% would drive our retirement costs up by $20 million per year.[2]

In addition, we are facing a number of additional fiscal challenges that are not reflected in the City's official Five-Year Forecast, most notably:

- The City is underfunding its annual road and infrastructure maintenance needs by approximately $105 million. There is also a backlog of one-time infrastructure needs totaling $474 million in the General Fund ($754 million in all funds).

- Vital services remain well below the needs of our community. The City Manager has estimated that it would cost $33 million per year to restore most of the critical services to January 2011 levels, which was the goal set in the Fiscal Reform Plan adopted by the City Council. However, I believe that this is only the *minimum* level of service that we should provide our residents, and it would cost many millions of dollars more to restore services to the levels that our residents expect.

Acknowledging all of these ongoing fiscal challenges is necessary to have a full understanding of the City's fiscal situation. It is our responsibility to confront these problems now so that they do not place an even larger burden on our children and grandchildren.

Balancing Fiscal Year 2012-2013 and Preparing for Fiscal Year 2013-2014

With a small surplus in Fiscal Year 2012-2013, next year is not expected to be a year of painful service reductions. However, we must continue to pursue cost reduction strategies and more efficient ways to provide City services while evaluating operations to better deliver services.

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[2] This figure is based on data provided by Cheiron, the independent retirement boards' actuaries, during the October 20, 2011 presentation to the Federated City Employees' Retirement System Board (http://www.sjretirement.com/uploads/FED/4_1itemFedOct11.pdf#page=10; see page 9 of the presentation / page 10 of the PDF) and a November 3, 2011 presentation to the Police and Fire Retirement Board at its November 3, 2011 Meeting (http://www.sjretirement.com/uploads/PF/2_1itemPFNov11.pdf#page=10; see page 9 of the presentation / page 10 of the PDF)

Given the projected shortfall in the second year (2013-2014) of the Forecast of $22.5 million, the City Manager is directed to use the $10 million surplus and $12.5 million future deficit reserves as one-time bridge funding to avoid direct service cuts until the savings are realized from the pension reform ballot measure and the other Fiscal Reforms. The City Manager is directed to prioritize remaining one-time funds on the restoration of critical infrastructure and maintenance needs and the pay down of expired debt.

We must be restrained in the temptation to add back direct services with ongoing impacts. However, in some areas of our organization the cuts have been too severe. The City Manager is directed to review operational needs within the City that pose risk and consider funding these critical needs. Funding to support these needs should come out of savings achieved through operational efficiencies and other ongoing reductions.

Moving forward in developing next year's budget, challenges remain in achieving long-term fiscal stability and in maintaining the City's service level goals. With that in mind, the City Manager is directed to use the Budget Balancing Strategy Guidelines as detailed in Attachment A to help balance next year's budget.

Restoring Services

The City Council already took a significant step forward in restoring services when it approved placing a pension reform ballot measure before the voters during the upcoming June election. But we must continue implementing the other elements of our City's Fiscal Reform Plan. This includes:

- Implementing a lower cost medical plan that will reduce healthcare costs for both the City and employees (appx. $13.9 million in General Fund savings)
- Ending sick leave cash-outs (appx. $6.2 million in General Fund savings)
- Eliminating overtime pay for management employees exempt under the Fair Labor Standards Act (appx. $1.2 million in General Fund savings)

Although necessary, few of these decisions will be easy, but if we continue to address our City's fiscal problems head on, we will finally be able to eliminate our structural budget deficit, halt the decline in jobs and begin to restore services.

As we get closer to eliminating our deficit, we can now begin the discussion of how to restore services. Moving forward with the implementation of the Fiscal Reform Plan, the City Manager is directed to use the principles listed in Attachment B as a guide towards the restoration of services.

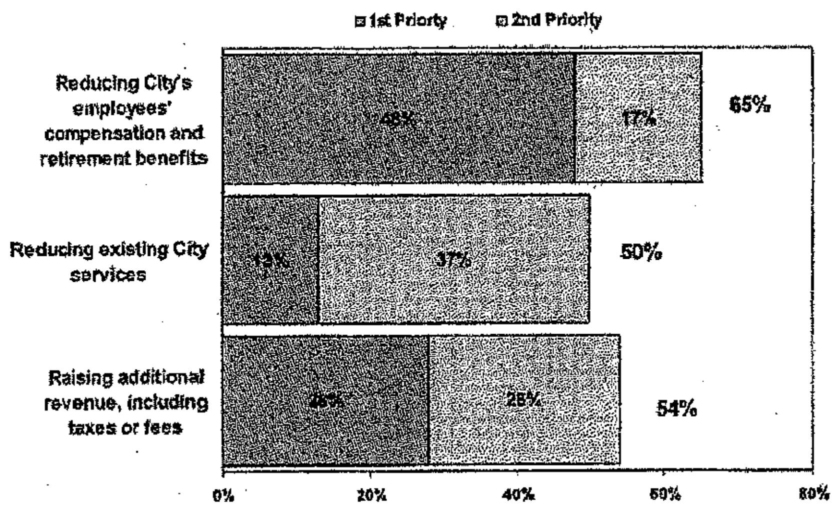
BACKGROUND

Community Budget Survey

My staff has been working closely with neighborhoods and residents to obtain their input throughout the budget process. In January 2012 a budget priority survey of more than 900 residents was conducted, and residents were able to give their input on their budget priorities and many different budget questions.

Overall, the survey reaffirms previous years' results that residents favor reducing employee compensation and benefits rather than reducing City services or raising additional revenue. Residents also favor budget balancing strategies that result in minor or no service reductions. Residents also seem to be more open than in previous years in supporting a revenue measure.

Preferred Approach to Balancing the Budget



Support for Various Cost Saving Proposals

The following proposals for cost savings were overwhelmingly supported by residents surveyed.

- Selling one of three City-owned golf courses (85%)
- Consolidating City Boards and Commissions (83%)
- Selling surplus City property (80%)
- Suspending the one percent Capital Improvement Project budget set aside for public art until the City eliminates the backlog of unfinished infrastructure projects (77%)

Support for Specific Revenue Generating Proposals

Survey respondents were asked to provide their opinions about several different options for generating revenue for the City. Specifically, they were asked about six potential finance measures requiring voter approval: three that would directly raise new revenue, one that would maintain existing revenue by extending the existing City library parcel tax, and two that would reallocate existing revenue sources. Only three of the measures, a one-quarter/one-half percent sales tax, adjusting the City's Business Tax rate, and a reallocation of hotel tax revenue from cultural arts to fund essential services appear to have enough public support to consider.

- One-quarter/one-half percent sales tax (65%)
- Adjusting the City's business tax rate (66%)
- A reallocation of hotel tax revenue (70%)
- A continuation/reduction and continuation of the current rate of the library parcel tax (60%)
- A reallocation of construction and conveyance tax (54%)
- A $95 parcel tax to fund City infrastructure services (51%)

Neighborhood Association and Youth Commission Priority Setting Session

At the Sixth Annual Neighborhood Association and Youth Commission Priority Setting Session, 87 residents prioritized City services. Participants were comprised of members of neighborhood associations, neighborhood commissions, and the Youth Commission.

Each exercise took place at a table with 7-9 residents along with two volunteers from Innovation Games. Participants were given two lists of programs with a limited amount of "funds." The first list consisted of proposals for service enhancements and the second list consisted of ideas for cost saving/revenue proposals. Participants could receive more funds to purchase neighborhood services if the team *unanimously* decided to approve a cost saving/revenue idea. The exercise was designed to determine what programs were held in the highest regard by residents.

Results

It was clear from the exercise that gang prevention and other forms of "non-police" intervention to increase safety and livability of the City were top priorities. Residents also showed a strong desire to increase revenues (raise taxes) to improve pavement conditions. It is important to note that those teams that enacted a sales tax spent significantly less money on funding proposals than was available, with an average of $12 million of unspent funds. This is a clear indication that these participants favor a prudent and measured approach to budgeting and spending.

Funding Proposals – The top proposals for funding were gang prevention efforts, general code enforcement, restoring the park ranger program, neighborhood and school traffic safety, and increasing library hours. As we begin to restore services after the Fiscal Reforms are implemented, these proposals must be given a high priority.

Cost Saving/Revenue Ideas – The top cost saving ideas were eliminating overtime for management positions, workers compensation, and disability retirement reform. The top revenue generating proposals were a ¼ cent sales tax and the business tax adjustment.

The full report from the Sixth Annual Neighborhood Association and Youth Commission Priority Setting Session can be found at:
http://www.sanjoseca.gov/mayor/goals/budget/PDF/2012_2013PrioritySettingSessionResults.pdf

INVESTMENT STRATEGIES

While our fiscal situation has improved, we must take a prudent approach to this year's budget and start planning for the $22.5 million deficit projected in Fiscal Year 2013-2014. We also need to be aware that this figure could rise, given the volatility in the economy and the uncertainty in many other revenue and cost factors. As a result, we should consider setting aside much of our ongoing surplus revenues and future deficit reserve.

However, we do have an opportunity to strategically invest some of these funds on a one-time basis in Fiscal Year 2012-2013. This approach would allow us to address some critical needs now, while ensuring that funds remain available to help address our future projected shortfall. These kinds of one-time investments include paying down debt and repairing critical infrastructure with a high-risk or high-cost of failure. These one-time investments can also serve as bridge funding while we pursue fiscal reforms that will allow us to maintain these programs and restore additional services on an ongoing basis.

1. **Community and Economic Development**

   a. **Small Business Development Services Project Manager/Expediter:** The City Manager is directed to fund a position that serves as a single point of contact for small business development projects going through the development process and works with Development Services partners to accelerate permit processing schedules.

   b. **Downtown Association:** The San Jose Downtown Association will continue to play an important role as the City's partner to activate and promote the Downtown. The City Manager is directed to allocate $260,000 in one-time funds from the Parking Fund to the San Jose Downtown Association. The scope of work will include services related to downtown business retention and recruitment, promotion, and event production. $40,000 in funding is available from TOT funds and an additional $20,000 in funding is available through the ESD grant program. This will ensure that the Downtown Association remains at the funding levels as the current year, which was a large reduction from the previous year.

   c. **Arts and Cultural Institutions:** San José's cultural institutions and event producers provide significant economic benefit, attract regional participation, and raise significant of their funds from the private and philanthropic sectors. To support the growth of external funding, the City Manager is directed to provide the nonprofit operators of City-owned cultural facilities (San Jose Museum of Art, Children's Discovery Museum, San Jose Repertory Theatre, Mexican Heritage Plaza, and Tech Museum of Innovation) with operating funding equal to last year's allocation which was a reduction from prior years.

2. **Public Safety and Neighborhood Services**

   a. **Library and Community Center Openings:** The City Manager is directed to begin the process of opening the closed community facilities. These include the Seven Trees, Bascom, Educational Park, and Calabazas Branch Libraries, and the Bascom Community Center. Opening these facilities has been a long priority for our community. If possible, redirect existing current year resources to open the Bascom Community Center prior to July 1 to allow for as much summer programming opportunities as possible.

b. **Gang Prevention Funding and Safe Schools Campus Initiative:** The City Manager's Forecast includes $2.4 million in funding for the opening of the Police Substation. Gang prevention efforts were a priority for our residents and our neighborhood associations during our community budgeting process. The City Manager is directed to allocate $2 million for gang prevention programs, BEST funding, and the Safe Schools Campus Initiative by delaying the opening of the Police Substation. The remaining funds from delaying the opening of this facility should be used to help support one-time funded public safety items that are due to expire in June.

c. **Crossing Guards:** The safety of our school children remains a top priority for San José residents, as well as the City Council. During meetings with Superintendents at the Schools/City Collaborative, the Superintendents stated that this was the most important service the City provides for the schools. The City Manager is directed to maintain funding to the elementary and middle school crossing guard program.

d. **Children's Health Initiative:** The Anti-Tobacco Master Settlement Agreement funds have provided valuable funds to improve the quality of life of San José's youth and senior populations through the Healthy Neighborhoods Venture Fund (HNVF) program. The City Manager is directed to maintain funding for the Children's Health Initiative.

e. **Senior Services and Wellness/HNVF:** The Senior Nutrition Program provides healthy meals and social activity to San José's elderly residents. Through this program, seniors receive nutritious meals and social interaction that prevents them from being isolated. Together with the many social services that support this program, seniors are able to live more active and independent lives. Last year, the City in collaboration with the Senior Nutrition Task Force, maintained senior nutrition services at the 13 current City sites. The City Manager is directed to continue to support these efforts. The City Manager is also directed evaluate this program for potential improvements. To continue the strategy approved last year, ongoing funding of $400,000 should be allocated from the HNVF Competitive Fund.

   Earlier in the year during the Community Development and Block Grant (CDBG) discussion, the City Council set a target to allocate an additional $400,000 towards senior services. Approximately $200,000 will be allocated as part of a CDBG grant. The City Manager is directed to allocate an additional $200,000 in one-time funds to meet this target.

f. **Community Action and Pride (CAP) Grant Program:** The Community Action and Pride (CAP) grant program provides small grants to San José neighborhood groups to fund activities that result in cleaner, safer and more engaged communities. The CAP grant program stopped receiving ongoing General Fund budget allocations in the 2008-2009 Operating Budget.

   The program, which is administered under the direction of the City Administration, was able to hold onto funding that had remained in the program to fund grants over the years.

As a result of careful use and monitoring of funds, there remains savings of $110,000. The City Manager is directed to reallocate this funding to continue the program into next year.

g. **Counseling Services in the Police Department:** The San José Police Department's Chaplaincy Program has traditionally provided police officers, their families, and City residents with counseling services. More than 20 volunteer community chaplains, representing various faiths, offer counseling and support in departmental functions such as promotions, graduation ceremonies, and funeral arrangements. The City Manager is directed to allocate $20,000 to be used for counseling services to the Police Department and the community.

h. **Community Development Block Grant (CDBG)/Housing and Urban Development (HUD) 108 Loan:** As part of determining the financial state of the Successor Agency to the Redevelopment Agency, City staff projected future property tax increment revenues and analyzed the level of enforceable obligations for the Forecast period. Based on that analysis, it is projected that there will not be sufficient tax increment to pay all the enforceable obligations for the first four years of the Forecast period. Per an agreement between the Federal Department of Housing and Urban Development, if the Successor Agency is not able to make the loan repayment for the HUD Section 108 loan program, CDBG funds can be used to cover the obligation. The City Manager is directed to use CDBG funds to fulfill the debt service requirement if the Successor Agency cannot make the payment.

i. **Medical Marijuana Dispensaries:** In January 2011, our Finance Department estimated the number of marijuana dispensaries at more than 100. In February, direction was given to focus enforcement on the dispensaries causing the most problems and generating the most complaints. Last year roughly $1.2 million from the Marijuana Business Tax was allocated to maintain oversight over the closure of those establishments not registered with the City. Enforcement is a priority for City Council and funds should be used for enforcement but at the most cost effective level possible. Every dollar allocated for enforcement staff is a dollar that can be used for patrol or additional library hours. The City Manager is directed to review and report on the funding efforts from last year and bring forward a proposal that meets the needs of the marijuana enforcement program, at the lowest possible cost. These proposals should be one-time until there is more certainty related to the legislation.

j. **La Raza Study:** For years, we have seen Latinos disproportionately represented in our criminal justice, juvenile justice, and child welfare systems. With so many different causes and factors involved, this problem has long been considered impossible to solve. Yet, through the leadership of La Raza Roundtable, we now have a broad collaborative effort that cuts across different agencies and levels of government to address the various pieces of the problem. The City Manager is directed to allocate $50,000 towards this effort.

k. **Christmas in the Park:** Christmas in the Park (CITP) is a San José tradition, and a longstanding anchor of the City's Downtown for the Holidays attraction serving locals and visitors alike. Each year, the holiday event generates significant economic benefits to the community, bringing in approximately $13.3 million in total visitor spending and generating critical economic activity for the restaurants, businesses, and attractions in the core downtown area. Over the past year and a half, Cultural Affairs staff has been working with the CITP board to transition the nonprofit from a City supported event to an independent organization responsible for producing the event, raising the funds, and managing their own staff. The last City funded position was eliminated in February. I recommend a one-time transition grant to be allocated from additional unexpected TOT revenues that were recognized at mid-year. Cultural Affairs funds are restricted and cannot be used for other purposes. Allocating these funds to Christmas in the Park will help minimize potential impacts to the General Fund.

l. **Fair Swim Center:** The City has been informed that the current vendor operating at Fair Swim Center will not continue to offer aquatics programs this summer. In order to continue operations this summer, the City Manager is directed to allocate $30,600 in one-time bridge funding while PRNS seeks a new vendor.

3. Transportation and Environment

a. **Street Maintenance and Repair:** The lack of sufficient funding has resulted in deferred maintenance and a decline in the condition of the City's infrastructure, particularly our roads. The 2,400 mile roadway network requires much larger investments of funding than is currently available to maintain and improve their condition. As a result, the Administration is recommending funding be allocated for use on a 400 mile priority street network of main roads that are most heavily used by San José residents and provide access to major job centers and residential areas throughout the City. By investing limited dollars on priority streets, those streets can continue to be well maintained and kept in good condition, avoiding the much higher costs of rehabilitation when maintenance gets deferred.

A recent report to the Transportation and Environment Committee identified a need of $100 million annually to properly maintain and improve the entire 2,400 mile street network, and available funding of $18 million. The funding is proposed to cover basic pothole patching and most of the maintenance and repair needed for the 400 mile priority network. The funding is $2 million short of what is needed to fully cover the maintenance of the priority network. The Administration is directed to prioritize funding from available capital and general sources to fully fund the priority network, and to evaluate whether any other funds can be allocated to cover the remaining 400 miles of the major street network and the associated $16 million needed. There is recognition that the 1,600 miles of local/residential roads would have maintenance deferred under this approach. The Administration is further directed to work with the Mayor's Office to explore and report back to the City Council in June on the feasibility of using General Obligation Bonds to rehabilitate streets in poor condition, with particular emphasis on those roads in our neighborhoods.

b. **Keeping San José Streets Safe for Pedestrians, Bicyclists, and Motorists:** Over the last two decades, San José has continually improved its street safety record and has an injury crash rate half the national average. A consistent focus and investment in engineering, education and enforcement over that period has contributed to the safety record. Our efforts have been essential to keeping the community safe on the roads, and have the added benefit of reducing emergency responses by our Police and Fire Departments. However, recent budget balancing has limited investment in traffic safety devices and programs and has contributed to a leveling off, and in some cases slight increases in injury crashes along major streets for pedestrians, bicyclists, and seniors.

The Administration is directed to identify available traffic capital funds to invest in safety devices and programs targeted to the most sensitive areas such as: major roadway crossing points; locations where highly visible signage, markings, and devices will make pedestrians, bicyclists, and motorists more aware and alert; and cost effective education efforts targeted at the most vulnerable populations like seniors, children, and bicyclists.

c. **4th Street Garage Debt Service/Parking Fund:** Per the bond covenants for the 4th and San Fernando Street Parking Garage, revenues of both the Successor Agency and the General Purpose Parking Fund are pledged to make the loan repayment for the annual debt services of $3.4 million related to this facility. In the event the Successor Agency to the Redevelopment Agency has insufficient revenues to make the payment, the Administration is directed to allocate funds in the General Purpose Parking Fund for the debt service payment.

d. **Autumn Parkway Project:** The City's economic development strategy identifies development of the Diridon Station area as a priority strategic goal, to help ensure the City's long-term economic success. The Diridon Station area includes the HP Pavilion and a plan for developing a world-class entertainment, retail and office district. A key transportation investment to serve that area is the extension of Autumn Parkway from Coleman Avenue to the HP Pavilion. Getting the roadway constructed over the Union Pacific railroad tracks by 2013 is necessary to comply with Public Utilities Commission approvals for a new railroad crossing. This project was previously budgeted by the Redevelopment Agency prior to its elimination by the State. The Administration is directed to identify project money in the Capital CIP and to seek alternative funding for the Autumn Parkway project.

4. **Strategic Support**

a. **Essential Services Reserve:** The City Manager is directed to set aside $1 million of one-time funds that may be used for the purpose of supporting services that are of essential importance to our residents. Services deemed essential by the City Council may be funded with the use of these one-time funds.

b. **City Council Appointees:** To ensure overall strategic leadership and service delivery for the organization and ensure that services are stabilized, the Mayor's Budget Office will work with the City Council Appointees to bring forward a budget to maintain the same service level except where program changes may be warranted and one-time funding expires.

c. **Data Analytics Programs:** Analytics programs increase efficiency, create cross agency transparency, and enable innovations while reducing the cost of government. The City Manager is directed to work with the Mayor's Office to review the opportunity to use data analytics programs in San José starting with the Police Department.

d. **Outside Legal Assistance:** In the City Attorney's Office, all but five attorney positions are members of the Association of Legal Professionals. The City Manager is directed to work with the Mayor's Budget Office and the City Attorney on an appropriate level of ongoing funding to provide for outside legal counsel for labor negotiations, representation at the Retirement Boards, related Public Records Act requests, and on other matters as necessary.

e. **Review of One-Time Funded Services from 2011-2012:** The City Manager is directed to review one-time funded services that were included in the 2011-2012 Adopted Budget to determine reallocating resources to continue on an ongoing basis where appropriate.

COORDINATION

This memorandum has been coordinated with the City Manager and the City Attorney.

Attachment A

2012-2013 Budget Balancing Strategy Guidelines

1. Develop a budget that balances the City's delivery of the most essential services to the community with the resources available.
2. Balance ongoing expenditure needs with ongoing revenues to ensure no negative impact on future budgets and to maintain the City's high standards of fiscal integrity and financial management.
3. Focus on protecting vital core City services for both the short- and long-term. Analyze existing service levels and focus on delivering those services that are most essential.
4. As outlined in the Principles for Restoring City Service Levels, allocate additional resources with the following goals in mind: ensure the fiscal soundness of the City; choose investments that achieve significant outcomes; and improve efficiency and effectiveness of service delivery.
5. Explore personal services cost savings, including overtime, subject to the meet and confer process where applicable. The Fiscal Reform Plan approved by the City Council with the adoption of the 2011-2012 budget outlined a number of cost reduction strategies, including several retirement-related reforms, that continue to be pursued.
6. Analyze non-personal/equipment/other costs, including contractual services, for cost savings opportunities. Contracts should be evaluated for their necessity to support City operations and to identify negotiation options to lower costs.
7. Engage employees in department budget balancing idea development.
8. Focus on business process redesign in light of the severe staff reductions during the last three fiscal years in order to improve employee productivity and the quality, flexibility, and cost-effectiveness of service delivery (e.g., streamlining, simplifying, reorganizing functions, and reallocating resources).
9. Explore alternative service delivery models (e.g., partnerships with the non-profit, public, or private sector for out- or in-sourcing services) to ensure no service overlap, reduce and/or share costs, and use our resources more efficiently and effectively. The City Council Policy on Service Delivery Evaluation provides a decision-making framework for evaluating a variety of alternative service delivery models.
10. Identify City policy changes that would enable/facilitate service delivery changes or other budget balancing strategies.
11. Explore redirecting and/or expanding existing revenue sources and/or adding new revenue sources as outlined in the Fiscal Reform Plan.
12. Establish a fee structure to assure that operating costs are fully covered by fee revenue and explore opportunities to establish new fees for services, where appropriate.
13. Make every effort, if operationally feasible and needed for cost-effective service delivery, to eliminate vacant positions, rather than filled positions, to minimize the number of employee layoffs. As service levels change, ensure that management and administration are re-sized as appropriate.
14. Use the General Plan as a primary long-term fiscal planning tool and link ability to provide City services to development policy decisions.
15. Continue a community-based budget process where the City's residents and businesses are educated and engaged, as well as have the opportunity to provide feedback regarding the City's annual budget.

Ensure the Fiscal Soundness of the City

- Develop the General Fund budget to support the City's mission and use the City Council-approved Budget Balancing Strategy Guidelines (Attachment A) to ensure the long term fiscal health of the City.
- Ensure services that are restored can be sustained over the long-run to avoid future service disruption. (Use Five-Year General Fund Forecast as one tool.)
- If possible, defer adding new permanent positions until new retirement system is in place.

Choose Investments that Achieve Significant Outcomes

- Ensure restored services represent City Council priorities and the highest current need in the community.
- Balance investments among three categories:
  - Restoration of services (public safety and non-public safety services, including critical strategic support services).
  - Opening of new facilities.
  - Maintenance of City infrastructure and assets.
- Prioritize baseline service level restorations using performance goals.
- Focus funding on areas where there is a high probability of success and/or a high cost of failure.

  i. Focus funding on infrastructure needs where there is a significant increase in cost if maintenance is delayed (such as street maintenance).
  ii. Focus investments in technology that have the greater return on investment in terms of services to the public and employee productivity.

Improve the Efficiency and Effectiveness of Service Delivery

- Before restoring prior service methods, evaluate options to determine if alternative service delivery models would be more cost effective.
- Ensure strategic support and technology resources are capable of supporting direct service delivery and effective management of the organization.
- Prioritize organizational investments that maximize workforce productivity, efficiency, and effectiveness.
- Pursue opportunities and methods, including performance, to retain, attract, and recognize employees within resource constraints.